

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

CHARLES MORROW, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	CASE NO: 3:07-cv-00617-MHT
v.	)	
	)	
FLOWERS FOODS, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANT FLOWERS FOODS, INC.’S, FLOWERS BAKING CO. OF OPELIKA, LLC’S, AND FLOWERS BAKING CO. OF THOMASVILLE, LLC’S**  
**BRIEF IN SUPPORT OF ITS MOTION FOR PROTECTIVE ORDER AND/OR**  
**MOTION TO QUASH NON-PARTY NATIONAL ACCOUNTS SUBPOENAS**

COME NOW, Defendant Flowers Foods, Inc. (“Flowers Foods”), Flowers Baking Co. of Opelika, LLC (“Flowers/Opelika”), and Flowers Baking Co. of Thomasville, LLC (“Flowers/Thomasville”), by and through its undersigned counsel, and respectfully submit this Brief in Support of their Motion for Protective Order and/or Motion to Quash Non-Party National Accounts Subpoenas (“Motion for Protective Order”).

Plaintiffs, who are limited in number and geographic representation, and who contracted with only two Flowers Foods’ subsidiaries,<sup>1</sup> namely Flowers/Opelika and Flowers/Thomasville, brought this Section 216(b) action on behalf of a nationwide class. Plaintiffs filed their Motion to Conditionally Certify and Facilitate Class Notice (“Motion for Conditional Certification”), which this Court has not yet ruled on, seven months ago. In the interim, this Court has issued two

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<sup>1</sup> Specifically, Plaintiffs are currently comprised of only three current, and eight former, distributors with Flowers/Opelika and Flowers/Thomasville. Plaintiffs Charles Morrow, Michael Overton, James Marty Smith, Michael Smith, Ricky Small, Melvin Snow, and Greg Patisaul are former distributors of Flowers/Opelika. Plaintiff Gary Chambliss is a former distributor of Flowers/Thomasville. Plaintiffs Dwayne Cleveland, Mark Murphy, and Lew Baxter are current distributors of Flowers/Opelika.

Orders specifically providing that any pre-conditional certification discovery in this case is limited to that which pertains to the named parties and the allegations against them. In both Orders, the Court stated that pre-conditional certification class-wide discovery is not appropriate.

Notwithstanding, Plaintiffs have again attempted to obtain pre-conditional certification class-wide discovery by sending subpoenas, without advance or even contemporaneous notice (and while seemingly misstating when the subpoenas were served), to sixteen different national accounts. Despite being in complete disregard of this Court's Orders limiting the scope of pre-conditional certification discovery, the information Plaintiffs seek in these non-party subpoenas is duplicative of information Defendants already provided to Plaintiffs and reaches far beyond the representative sampling approach which both parties have agreed would be sufficient for national accounts documents.

As will be discussed below, it is clear that any information responsive to these subpoenas would merely be duplicative of the representative sampling of documents Plaintiffs have already received, produced upon explicit agreement of the parties, and would be completely irrelevant to Plaintiffs' individual FLSA overtime claims. Therefore, because Plaintiffs' subpoenas seek duplicative information that exceeds far beyond the scope of permissible discovery established by this Court, Defendants respectfully urge this Court to grant its Protective Order and/or Motion to Quash prohibiting Plaintiffs from obtaining the information they seek in their subpoenas and rendering any such subpoenas unenforceable.

## **I. PROCEDURAL AND RELEVANT FACTUAL BACKGROUND**

### **A. Factual Background Regarding Complaint, Motion for Conditional Certification, and Scheduling Order**

Plaintiffs filed their Complaint on July 2, 2007, against Flowers Foods and Flowers/Opelika under 29 U.S.C. § 216(b), seeking to maintain a "nationwide" collective action

on behalf of themselves and others “similarly situated.”<sup>2</sup> Specifically, Plaintiffs sought a class of all current and former distributors, located in twenty different states and the District of Columbia, who are currently operating out of 500 different warehouses and who contracted with (or were employed by)<sup>3</sup> any one of the twenty-five different Flowers Foods’ subsidiaries that utilized independent distributors. (Ct. Doc. Nos. 1; 42 (filed October 17, 2007), pp. 2-3 and the affidavits cited therein and filed concurrently therewith.)

Plaintiffs filed their Motion to Conditionally Certify and Facilitate Class Notice and Memorandum in Support (“Motion for Conditional Certification”) on September 21, 2007 (Ct. Doc. Nos. 32; 33), pursuant to this Court’s Uniform Scheduling Order. (Ct. Doc. No. 28.) This Court has not ruled on Plaintiffs’ Motion. In a subsequent Order dated April 25, 2008, this Court provided that “no further briefing (on whether conditional certification is appropriate) is permitted without leave of court.” (Ct. Doc. No. 102, citing Ct. Doc. No. 35.)

Pursuant to this Court’s Scheduling Order, Plaintiffs had until January 3, 2008, to add additional parties. (Ct. Doc. No. 28, pp. 2-3, § 5.) Although Plaintiffs moved to extend this deadline (Ct. Doc. No. 67), the Court issued an Order denying Plaintiffs’ Motion, preserving the January 3, 2008, deadline to add additional parties. In this Order, the Court provided that it would reconsider whether an extension of time to add additional parties was warranted only after the court resolved the class certification motion, and then only upon a showing of good cause. (emphasis added). (Ct. Doc. No. 91.) Therefore, to date, the only subsidiaries of Flowers Foods which are, and can be added as, parties at this time are Flowers/Thomasville and Flowers/Opelika.

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<sup>2</sup> While Defendants deny that Plaintiffs were or are “employees,” Section 216(b) nonetheless is the vehicle for Plaintiffs to bring their claims given their contention that they are or were “employees” under the FLSA.

<sup>3</sup> Some distributors may have been Company route sales employees, and not independent distributors, during statutory period.

B. Court's Orders Limiting Discovery and Approving the Parties' Agreement Regarding the Production of a Representative Sampling of Documents for National Accounts

1. Plaintiffs' 30(b)(6) Deposition Notice Seeking Class-wide Pre-Conditional Certification Discovery

On September 5, 2007, Plaintiffs served Defendant Flowers Foods with a 30(b)(6) Deposition Notice, seeking class-wide discovery pertaining to Flowers Foods' involvement with thousands of current and former distributors who contracted with, or were route sales employees for, any one of the twenty-five (25) subsidiaries that utilize independent distributors. (*See* Ct. Doc. No. 100, Exhibit C, attached thereto, Plaintiffs' 30(b)(6) Notice of Videotaped Deposition to Flowers Foods, Inc.) The Deposition Notice listed several "Subject Matter Topics" and "Requests for Production of Documents" ("Document Requests"). Included in the list of Subject Matter Topics and Document Requests was a request specifically pertaining to national accounts. (*See id.*, ¶ 6.)

On October 31, 2007, Defendants filed a Motion for a Protective Order to limit the scope of this Deposition Notice and the Document Requests contained therein, outlining in detail that under precedent of this Court, such "class-wide" discovery was inappropriate before any decision by the Court conditionally certifying this action. (Ct. Doc. No. 48.) In their Motion, Defendants included proposed scopes of inquiry for the Subject Matter Topics and Document Requests. Specifically, for the paragraphs discussing national accounts, the parties proposed the following scope of inquiry for testimony:

Plaintiffs' Proposed Scope of Inquiry: Flowers Foods, Inc.'s involvement in the determination of route sales by route distributors to national accounts.

Defendants' Proposed Scope of Inquiry: **Flowers Foods' involvement with national accounts in Plaintiffs' or the**

**Opelika opt-ins'<sup>4</sup> respective territories (i.e. testimony regarding those national accounts that one or more of the Plaintiffs or Opelika opt-ins actually sold products to) from July 2, 2004, to date.**

(Ct. Doc. No. 48, p. 15, ¶6; Ct. Doc. No. 68, ¶6.)

For the Document Requests pertaining to national accounts, the parties proposed:

Plaintiffs' Proposed Production: Documents concerning Flowers Foods, Inc.'s involvement in Flowers Baking Co. of Opelika, LLC's sale of products to national markets.

Defendants' Proposed Production: **Representative non-privileged documents concerning Flowers Foods' involvement in national accounts serviced by Plaintiffs or the opt-in Plaintiffs from July 2, 2004, to date.**

(Ct. Doc. No. 48, p. 17, ¶ 6; Ct. Doc. No. 68, ¶ 6.)<sup>5</sup> In response to Defendants' Motion for Protective Order, Plaintiffs outlined, in detail, their position that pre-conditional class-wide discovery was relevant and within the proper scope of discovery. (Ct. Doc. No. 57.)

Importantly, although the parties had yet to reach an agreement with regard to the general scope of discovery prior to any decision on conditional certification, the parties reached an agreement regarding the production of documents pertaining to national accounts. Specifically, during several meet and confer sessions between the parties, Defendants discussed with Plaintiffs that documents pertaining to national accounts to which Plaintiffs sold products were voluminous and that production of a representative sampling of such documents, including (for example) pertinent contracts, agreements, and emails, should provide a sufficient amount of information for Plaintiffs' claims. On November 26, 2007, Plaintiffs' Counsel wrote Defendants' counsel a letter, confirming that during the parties' October 16, 2007, and November 15, 2007,

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<sup>4</sup> At the time Plaintiffs' filed this 30(b)(6) Deposition Notice, the only Plaintiffs were individuals who contracted with Flowers/Opelika.

<sup>5</sup> Court Document 68 is Defendants' Reply Brief, which incorporates the same proposed inquiry and document production, with a few minor wording changes.

meet and confer sessions, the parties “agreed that **production of representative sampling of documents of . . . national accounts** could be made at this time . . . and that the plaintiffs . . . would discuss the production with you after initial review.” (See Letter from Joseph Guglielmo to Kevin Hishta, dated November 26, 2007, attached as Exhibit “A”) (emphasis added).

On November 27, 2007, after the benefit of full briefing by both parties, this Court granted Defendants’ Protective Order (“Order or Protective Order”), rejecting Plaintiffs’ position that such class-wide discovery was appropriate prior to conditional certification and explicitly limiting the scope of pre-conditional certification discovery to the named parties and the allegations against them. (See Ct. Doc. No. 64.)<sup>6</sup> The **Court also specifically adopted Defendants’ proposed production** and scope of inquiry for the 30(b)(6) Deposition, including the parties’ agreement that a “representative sampling” of documents pertaining to national accounts Plaintiffs sold products to during the statutory period would be sufficient.

2. Court’s April 25, 2008, Order Denying Plaintiffs’ Motion to Compel the Production of Pre-Conditional Certification Class-wide Discovery

On April 15, 2008, Plaintiffs filed a Motion to Compel the Production of Documents (“Motion to Compel”) (Ct. Doc. No. 96), asking the Court to compel Defendants to produce pre-conditional certification class-wide discovery involving communications with all distributors. After the benefit of full briefing by both parties, the Court denied Plaintiffs’ Motion to Compel, re-iterating that because the Court has not yet ruled on Plaintiffs’ Motion for conditional certification, “this case only involves the current named parties and the allegations against them.

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<sup>6</sup> Specifically, this Court provided:

Because the Court has not yet ruled upon the Motion to Conditionally Certify Class and Facilitate Class Notice (Doc. 32, filed September 21, 2007), **this case only involves the current named parties and the allegations against them. Thus, discovery is also limited to those parties and subject matter.**

(Ct. Doc. No. 64) (emphasis added).

Thus, discovery is also limited to those parties and subject matter.” (Ct. Doc. No. 102, Order dated April 25, 2008 (quoting Ct. Doc. No. 64.))

C. Discovery Pertaining to National Accounts

1. Plaintiffs’ Territories and Accounts to Which They Sell Products

While independent distributors with Flowers/Opelika or Flowers/Thomasville, Plaintiffs each own (owned) a territory, and sell (sold) products to different accounts within their respective territories. Plaintiffs’ territories include(d) some national accounts with whom representatives of Flowers Foods, Flowers Foods Bakeries Group, Flowers/Opelika or Flowers/Thomasville secured the initial business relationship. (Ct. Doc. No. 42, p.9, and Affidavits attached thereto and cited concurrently therewith; *see also* Dep. Tr. of David Roach (“Tr. of Roach”), pp. 17-25, attached as Exhibit “B.”) These national accounts include(d) Family Dollar Stores, Inc.; Wal-Mart Stores, Inc.; Fred’s Stores of Alabama, Inc.; Publix Supermarkets, Inc.; Winn-Dixie Stores, Inc.; Bruno’s, Inc.; Southern Family Markets, LLC; Target Corporation; Sonic Restaurants, Inc.; Arby’s, Inc.; Burger King Corporation; Hardee’s Food Systems, Inc.; Sodexo, Inc.; Chick-fil-A, Inc.; Zaxby’s Holdings; and The Krystal Company. (*See* Tr. of Roach, Exhibit 1 attached thereto.)

The composition of accounts within Plaintiffs’ territories differed substantially, with some Plaintiffs selling products to more national accounts than cash accounts, and vice versa. (Ct. Doc. No. 42, pp. 9-11.)<sup>7</sup> Indeed, many Plaintiffs did not sell products to a number of different national accounts. For example, Plaintiff Dwayne Cleveland was the only Plaintiff who sold products to a Bruno’s or Target. Plaintiff Michael Overton was the only Plaintiff who sold

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<sup>7</sup> The territories also included cash accounts, which the distributors were responsible for personally collecting monies for sales thereto. Some Plaintiffs had substantially more cash accounts in their territories than national accounts. *See, e.g.*, Plaintiff Melvin Snow’s Verified Responses to Defendants’ First Interrogatories (attached as Exhibit “C”), listing 26 cash accounts.

products to a Publix. Charles Morrow was the only Plaintiff who sold products to a Sonic, Sodexho, or Zaxby's. (Ct. Doc. No. 42; pp. 10-11.)

2. Parties' Discovery Pertaining to Such National Accounts to Date

Over the past seven months, the parties have engaged in substantial discovery, and Defendants have produced thousands of documents in response to Plaintiffs' Requests for Production of Documents and Requests for Interrogatories. (See Ct. Doc. No.100, Exhibit L attached thereto, Morrow Document Production Chart, for listing of all documents produced by Defendants.) Included in this production have been a "representative sampling" of documents (pursuant to the production approach agreed to by the parties) pertaining to the national accounts to which Plaintiffs sold products during the statutory period. (See *id.*; See also, Listing of Documents Produced Regarding National Accounts, attached as Exhibit "D.") Plaintiffs never objected to the representative sampling approach upon receipt of any of these documents, nor have they taken the position that the representative sampling they have been receiving is insufficient for purposes of their claims.

In addition to production of numerous documents pertaining to national accounts, on January 29<sup>th</sup> and 30<sup>th</sup>, 2008, Plaintiffs conducted the 30(b)(6) deposition of three different officials designated by Flowers Foods as their 30(b)(6) witnesses. (See Ct. Doc. No. 100, Exhibit C attached thereto, Plaintiffs' 30(b)(6) Notice of Videotaped Deposition to Flowers Foods, Inc.) One of the 30(b)(6) witnesses was David Roach, who was specifically designated by Flowers Foods to testify about the national accounts to which Plaintiffs sold products. Flowers Foods designated a separate witness, Karyl Lauder, to testify about various accounting issues implicated by the national accounts. Plaintiffs sought and obtained detailed testimony pertaining to these national accounts during these depositions. (See generally Tr. of David Roach; see also

Dep. Tr. of Karyl Lauder, pp. 1-6; 15-27; 33-25; and 38-60, attached as Exhibit “E.”) However, during the 30(b)(6) deposition, Plaintiffs failed to utilize a single document from individuals involved with the national accounts that Defendants had produced as part of their representative sampling.

Following the 30(b)(6) deposition, and during future productions pertaining to national accounts, the parties continued to use this representative sampling approach for documents pertaining to national accounts, and Plaintiffs never disagreed with this approach or took the position that the representative sampling they received was insufficient. Although Plaintiffs did request additional (voluminous) accounting and other national accounts documents in a March 19, 2008, letter to Defendants,<sup>8</sup> during a conference call on March 25, 2008, and in a letter on the same date, Defendants reminded Plaintiffs that the parties had agreed to a representative sampling of documents pertaining to national accounts. Defendants also reminded Plaintiffs that they failed to utilize a single documents from individuals involved in the national accounts during the 30(b)(6) deposition, and discussed that these additional requested documents were “wholly unnecessary for litigating the FLSA claims” of the named Plaintiffs. (See Ct. Doc. No. 100, Exhibit J, attached thereto, Letter from Defendants to Plaintiffs, dated March 25, 2008.) The parties ended their call by discussing that they would each go back to determine what national accounts for which they still needed (or had not produced) a representative sampling.<sup>9</sup> Defendants also specifically told Plaintiffs that they would be producing some specific national account documents Plaintiffs had requested previously. Indeed, Defendants produced those

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<sup>8</sup> In this letter, Plaintiffs also claimed they had not received a number of documents pertaining to national accounts, such as documentation pertaining to Wal-Mart. However, in Defendants’ letter dated March 25, 2008, Defendants reminded Plaintiffs that they had already produced such documents.

<sup>9</sup> Defendants have produced representative documents for all of the national accounts that Plaintiffs sell or sold products to.

documents to Plaintiffs on March 27, 2008, and April 25, 2008. (*See* Ct. Doc. No. 100, Exhibit L attached thereto, Letter from Defendants to Plaintiffs dated March 27, 2008; *see also* Exhibit D, *supra*.) Since this call, Plaintiffs have not informed Defendants that the representative sampling they had, and were continuing to receive, was insufficient or indicate that they no longer agreed with the representative sampling of documents approach.

### 3. Plaintiffs' Improper Course of Serving Subpoenas on Non-Party National Accounts

Notwithstanding this representative sampling production agreement, and subsequent production in accordance therewith throughout close to six months of discovery, Plaintiffs, without any advance (or even contemporaneous) notice to Defendants, served subpoenas on sixteen different non-party national accounts, seeking the same types of documents previously provided by Defendants, and more.

On or around April 15, 2008, and for the next few days thereafter, Defendants began receiving e-mails from the national accounts, including Hardee's Food Systems, Inc.; Zaxby's Holdings; Chick-fil-A; Publix; and Burger King, informing them that they had been served with subpoenas from Plaintiffs' counsel for this matter, attaching copies of the subpoenas received. These subpoenas were all "issued" by Plaintiffs' counsel on April 10, 2008, and were served on or about April 11, 2008. (*See* Subpoena for Hardee's Food Systems, Inc., Zaxby's Holdings, Chick-fil-A, and Burger King (attached as Exhibit "F").) None of the subpoenas were signed by Plaintiffs' counsel.

On April 23, 2008, close to two weeks after Plaintiffs issued these subpoenas, Plaintiffs sent an e-mail to Defendants, providing:

In accordance with Federal Rule of Civil Procedure 45(b)(1), let this serve as Plaintiff's notice that **we will be issuing subpoenas** to the following: Family Dollar Stores, Inc.; Wal-Mart Stores, Inc.;

Fred's Stores of Alabama, Inc.; Publix Supermarkets, Inc.; Winn-Dixie Stores, Inc.; Bruno's, Inc.; Southern Family Markets, LLC; Target Corporation; Sonic Restaurants, Inc.; Arby's Inc.; Burger King Corporation; Hardee's Food Systems, Inc.; Sodexo, Inc.; Chick-fil-A, Inc.; Zaxby's Holdings; and The Krystal Company.

The email did not attach copies of any of these subpoenas. (*See* E-mail from Teva Allen, CP, Paralegal to Greg Davis, dated April 23, 2008, attached as Exhibit "G" (emphasis added)).

The subpoenas themselves requested numerous documents, such as protocol agreements and contracts, which Defendants had already produced to Plaintiffs pursuant to the agreement between the parties. Further, the subpoenas requested all correspondence between the national accounts and various non-party entities of Flowers Foods with whom Plaintiffs had no relationship whatsoever. Specifically, the subpoenas sought:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence,

and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

The subpoenas provided that the date for compliance therewith was April 30, 2008. (*See id.*).

On April 25, 2008, Plaintiffs finally sent Defendants an email attaching all subpoenas Plaintiffs had issued two weeks earlier. The subpoenas sent by Plaintiffs' counsel were exactly the same as the subpoenas Defendants received from the national accounts, except for one important detail: unlike those subpoenas Defendants received from the national accounts directly, the subpoenas Plaintiffs' counsel sent to Defendants were all signed by Plaintiffs' counsel. (*See* Email from Plaintiffs' Counsel and Attached Subpoenas, attached as Exhibit "H.").

## **II. ARGUMENT AND CITATION OF AUTHORITY**

Under Rule 26(c)(4), the Court may "make any order which justice requires to protect a party or person from . . . undue burden or expense, including . . . that certain matters not be inquired into, or that the scope of the discovery or disclosure be limited to certain matters . . ." FED. R. CIV. P. 26(c)(4). A court may issue a protective order limiting discovery if it finds that the discovery sought is "unreasonably cumulative or duplicative or obtainable from some other source that is more convenient and less burdensome," or "the party seeking discovery has had ample opportunity to obtain the information by discovery in the action." Fed. R. Civ. P. 26(b)(2)(C)(i);(ii).

As will be discussed below, the Court should enter a Protective Order prohibiting Plaintiffs from obtaining the information sought within their subpoenas to the aforementioned national accounts, and rendering the subpoenas unenforceable, because the information sought therein is (A) irrelevant to Plaintiffs' individual claims and is well beyond the scope of discovery

as provided in this Court's Order; and (B) duplicative of the representative documents already produced by Defendants pursuant to the parties' own agreement.

A. The Subpoenas Request Information Which Is Irrelevant to Plaintiffs' Individual Claims and Extends Far Beyond the Scope of Permissible Discovery Established by This Court

This Court's prior Protective Order, Order dated April 25, 2008, and other precedent of this Court,<sup>10</sup> make it clear that "class-wide discovery" is inappropriate and premature before any decision on conditional certification. Notwithstanding, Plaintiffs are once again attempting to obtain pre-conditional class-wide discovery through the improper means of serving subpoenas on non-parties, which seek (in pertinent part) the same type of discovery that this Court has specifically held to be inappropriate.

The majority of information sought by Plaintiffs in their subpoenas to the aforementioned national accounts is completely irrelevant to the only issue subject to discovery at this stage of the lawsuit: that is, whether Plaintiffs were denied overtime wages in violation of the FLSA. As discussed above, Request 1 of the subpoena attachment requests (in pertinent part) a copy of the national account's "complete file referable to Flowers Food, Inc., Flowers Foods Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC,"<sup>11</sup> which by its terms includes documents and communications pertaining to or involving numerous individuals and entities which are not, and cannot currently be added as, parties to this

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<sup>10</sup> This Court has specifically held that any class discovery is premature unless and until a class is conditionally certified. *Crawford v. Dothan City Board of Education*, 214 F.R.D. 694, 695 (M.D. Ala 2003). In *Crawford*, plaintiffs filed a motion for leave to conduct limited discovery for purposes of conditional class certification. Chief Judge Albritton denied this motion – "*Applying [the Hipp] analysis in this case, because no collective action has been conditionally certified, discovery before step one of the two-step procedure is premature.*" *Id.* (emphasis added).

<sup>11</sup> Any request for documents pertaining to Flowers/Thomasville sent to national accounts which Chambliss (the only Plaintiffs who had any relationship whatsoever with Flowers/Thomasville) did not sell products to would be completely irrelevant.

lawsuit.<sup>12</sup> The subpoenas also seek information regarding communications or negotiations which do not pertain to or involve Plaintiffs or products sold by Plaintiffs to the national accounts, and most importantly do not involve or pertain to Plaintiffs' individual overtime claims. Further, although one small portion of the subpoena attachment requested specific communications between the national account and the individual Plaintiffs, the same subpoena attachment was used for each national account, without regard to whether the particular Plaintiff actually sold products to that account. Indeed, many Plaintiffs did not sell products to a number of the accounts to whom Plaintiffs sent subpoenas. (Ct. Doc. No. 42, pp. 9-11 and Affidavits attached thereto and cited concurrently therewith.) A representative sampling of any information requested in this attachment that is relevant to Plaintiffs' individual claims, such as contracts with accounts Plaintiffs actually sold products to, was or is being provided to Plaintiffs by Defendants per the parties' agreement.

Request 2 in the subpoena attachment seeks information regarding "contracts, protocol agreements, and distribution agreements" between the national accounts and Plaintiffs, including documents pertaining to negotiations with the Plaintiffs. However, ample testimony had already been provided in both 30(b)(6) deposition to establish that although distributors are often the initial business contact with cash accounts, an individual with Flowers Foods, Flowers Bakeries Group, Flowers/Thomasville or Flowers/Opelika is generally the initial business contact with the national accounts. This testimony provides that Plaintiff did not, as a matter of course, enter into contracts with these national accounts directly. (*See generally* Tr. of Roach.) Rather, Plaintiffs are responsible for selling product to the account, while building and increasing sales within that

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<sup>12</sup> This would include subsidiaries with which Plaintiffs do or did not have any contractual relationship whatsoever, such as all other Flowers Foods' subsidiaries (except the subsidiary with which the particular Plaintiff contracted) and entities, such as Flowers Foods Bakeries Group, which do not contract with any distributors, neither of whom have any relationship with any of the Plaintiffs.

account through various sales tactics to maximize their profits. (Ct. Doc. No. 42, p. 9 and Affidavits attached thereto and cited concurrently therewith.) Therefore, Plaintiffs are fully aware that documents requested in Paragraph 2 do not exist.

B. The Subpoenas Seek Documents and Information that is Duplicative of that already Provided by Defendants Pursuant to the Parties' Agreement, and For Which Plaintiffs Never Sought to Obtain from Defendants Directly

Federal Rule of Civil Procedure 26(b)(2)(C) provides that the Court must limit discovery if it determines that is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive" Fed. R. Civ. P. 26(b)(2)(C)(i). Further, the Court must limit discovery if it finds that the "party seeking discovery has had ample opportunity to obtain the information by discovery in the action." Fed. R. Civ. P. 26(b)(2)(C)(ii).

Here, Plaintiffs have served subpoenas on numerous national accounts for documents and information that has already been provided by Defendants pursuant to the parties' own representative sampling agreement. Plaintiffs have never informed Defendants that they believed these representative samples to be inadequate. Further, as noted above, Plaintiffs failed to use a single representative document from individuals involved with the national accounts in their 30(b)(6) Deposition.

In addition to being duplicative of information already provided to Plaintiffs, the information sought in the subpoenas was extensively covered in David Roach's 30(b)(6) deposition on January 30, 2008. During that deposition, Plaintiffs had ample opportunity to (and did) explore Flowers Foods', Flowers Foods Bakeries Group's, Flowers/Thomasville's, and Flowers/Opelika's involvement with national accounts in Plaintiffs' respective territories that Plaintiffs sold products to during the statutory period. Mr. Roach and Ms. Lauder's testimony

specifically delved into topics such as (for example) exactly how this business is obtained, any negotiations that take place between the national account and Flowers Foods, Flowers Foods Bakeries Group, and Flowers/Thomasville and/or Flowers/Opelika, and any contractual terms entered into thereto, contact persons for such business within Flowers Foods, Flowers Foods Bakeries Group, and Flowers/Thomasville and/or Flowers/Opelika, how pricing is established for each type of product sold to these national accounts and how such pricing differs, and the business processes for when new stores are opened. (*See generally*, Tr. of Roach; Tr. of Lauder.)

Moreover, the subpoenas also request “all documents describing Flowers Foods, Inc., [and] products distributed,” which not only far exceeds that which is relevant to Plaintiffs’ individual claims but also necessarily includes voluminous accounting records about which a separate Flowers Foods 30(b)(6) designee, Karyl Lauder, was produced to provide testimony. Plaintiffs had every opportunity to, and did, discuss these issues in depth with Ms. Lauder during her 30(b)(6) deposition. (Tr. of Lauder.)

C. The Court Should Enter a Protective Order Because Plaintiffs are Using the Subpoena Process Inappropriately, in an Improper Attempt to Obtain Discovery to Which They Would Otherwise Not be Entitled

As discussed above, because there is no legitimate justification for serving all of the above-referenced national accounts with these subpoenas, Plaintiffs are clearly misusing the subpoena process in an attempt to obtain documents to which they otherwise would not be entitled and to harass national accounts so that they may exact leverage in connection with this litigation. Recognizing the critical importance of safeguarding customer relationships, courts have precluded plaintiffs from seeking such discovery. *See, e.g., Joy Tech., Inc. v. Flakt, Inc.*, 772 F. Supp. 842, 849 (D. Del. 1991) (vacated on other grounds) (precluding plaintiff from

seeking discovery from defendant's customers where plaintiff had not shown that it could not obtain the information from defendant).

Further, Plaintiffs failed to comply with Federal Rule of Civil Procedure 45(b)(1) by providing advance, or even contemporaneous, notice of the subpoenas as required by Federal Rule of Civil Procedure 45. Rather, Plaintiffs sent an email, almost two weeks after they had already "issued" the subpoenas, and six days before the compliance deadline, seeming misrepresenting that they had not yet served the subpoenas. As noted above, the subpoenas served on the national accounts appeared to be unsigned. Only the copies sent to the undersigned counsel appear to be signed. Due to the lack of advance or even contemporaneous notice by Plaintiffs regarding these subpoenas, Defendants were unable to object to the scope of these subpoenas before they were issued, or otherwise attempt to resolve this dispute without judicial intervention, because the subpoenas had already been served.

As Chief Judge Albritton of this Court has noted in the Section 216(b) context, "Courts, as well as practicing attorneys, have a responsibility to avoid the 'stirring up' of litigation through unwarranted solicitation." *Horne v. United Services Auto Ass'n*, 279 F. Supp. 2d 1231, 1237 (M.D. Ala. 2003) (quoting *Brooks v. BellSouth Telecommunications, Inc.*, 164 F.R.D. 561, 567 (N.D. Ala. 1995)). The aforementioned subpoenas fall into this category.

### **CONCLUSION**

For the above reasons, Defendants respectfully requests that the Court grant its Protective Order and render any subpoenas issued by Plaintiffs to non-party national accounts unenforceable.

Respectfully submitted this 29th day of April, 2008.

/s/ Kevin P. Hishta  
Kevin P. Hishta

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Co. of Thomasville, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 29<sup>th</sup> day of April, 2008, I electronically filed the foregoing Defendant Flowers Foods, Inc.'s, Flowers Baking Co. of Opelika, LLC's, and Flowers Baking Co. of Thomasville, LLC's, Brief In Support of Its Motion For Protective Order And/Or Motion to Quash Non-Party National Account Subpoenas with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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Montgomery, AL 36117

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/s/ Kevin P. Hishta  
Kevin P. Hishta

**EXHIBIT LOG**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Date</u></b>
A	Letter from Joe Guglielmo to Kevin Hishta	11/26/2007
B	Deposition Transcript of David Roach	01/30/2008
C	Plaintiff Melvin Snow's Answers to Defendants' First Interrogatories	01/21/2008
D	Listing of Documents Produced regarding National Accounts	
E	Excerpts from the Deposition of Karyl Lauder	01/30/2008
F	Subpoenas from National Accounts: Zaxby's Holdings, LLC; Chick-fil-A, Inc.; Burger King Corporation and Hardee's Food Systems, Inc.	
G	E-mail from Teva Allen to Kevin Hishta regarding subpoenas	04/23/2008
H	E-mail from Plaintiffs' Counsel with attached copies of subpoenas	04/25/2008

# EXHIBIT A



WhatleyDrake&Kallas

Joseph P. Guglielmo  
Direct Dial: 212-447-7007  
jguglielmo@wdklaw.com

November 26, 2007

VIA E-MAIL

Kevin P. Hishta  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
2100 Bank of America Plaza  
Atlanta, Georgia 30308

Re: *Morrow et al. v. Flowers Foods, Inc. and Flowers Baking Co. of Opelika, LLC*  
Civil Action No. 3:07-cv-00617-MHT

Dear Kevin:

The purpose of this letter is to set forth our discussion regarding the production of documents, the plaintiffs' requests for admission and plaintiffs' interrogatories.

During our meet and confers October 16 and November 15, 2007 on Plaintiffs' 30(b)(6) Notice, you have agreed to produce discovery from and concerning Flowers Foods, Flowers/Opelika and Flowers/ Thomasville (collectively "Defendants"). However, it is our understanding that Defendants continue to take the position that the scope of discovery should not include information concerning other potential independent distributors other than the twelve (12) named plaintiffs nor should it include information relating to any subsidiaries other than Defendants Flowers/ Opelika and Flowers/ Thomasville. Therefore, we agreed to set aside the overarching objection on the scope of discovery allowed until the Court has ruled on the pending Motion for Protective Order. Plaintiffs continue to believe that permissible discovery includes information relating to any subsidiaries of Flowers Foods including any discovery of Flowers Foods concerning its involvement or control of its subsidiaries.

During our meet and confer, you identified areas where responsive materials potentially exist, including: the individual distributor files, accounting documents, national accounts files, policy and procedure documents, training documents, business model documents, implementation documents, prospective distributor records, hand-held computer records, emails and documents regarding risk of loss.

New York • Birmingham • Boston

Whatley Drake & Kallas, LLC Attorneys at Law 1540 Broadway, 37th Floor New York, New York 10036 Telephone: (212) 447-7070 Facsimile: (212) 447-7077

www.wdklaw.com



Kevin P. Hishta  
November 26, 2007  
Page 2

Specifically, as to production of these documents trails you confirmed the following:

- individual distributor files would be maintained at the subsidiary level and would primarily consist of paper files.
- accounting documents consisting primarily of weekly settlement statements and certain back-up documentation (most likely maintained as electronically stored information) that would be possessed both by the parent company and the subsidiaries.
- We agreed that production of representative sampling of documents of pay-by-scan, national accounts could be made at this time based on your representation of the volume and that plaintiffs and would discuss the production with you after the initial review.
- policy and procedure documents would be produced both at the parent and subsidiary level.
- training documents would exist at the individual subsidiary level and that production would be made from both locations.
- business model documents are located at both the parent and the subsidiary level.
- implementation documents are located primarily at the subsidiary level, but there will be some documents at the parent level.
- prospective distributor records are located at the individual subsidiary level.
- hand-held computer documents are located at the individual subsidiary level.
- Emails are located at both the parent and the subsidiary levels.
- We agreed that production of a representative sampling of documents concerning risk of loss documents including those that are found in the Protocol Agreement both from the parent and the subsidiary levels.
- As with the national account documents, we have agreed to accept the representative sampling and would discuss the production with you after the initial review.

With regard to these document trails, for those documents not subject to the overarching discovery disagreement mentioned above, You confirmed that Defendants have agreed to a rolling production, which should commence in the next three to four weeks. At this time, you have also agreed to confer with your production team and then consult us on the manner and method of production, including the method we have set forth in our request for production.

Kevin P. Hishta  
November 26, 2007  
Page 3

Lastly, you have agreed to re-review the requests for admission and the interrogatories and to modify Flowers Foods' responses with respect to the addition of the new Defendant, Flowers/ Thomasville. With this letter, plaintiffs are serving separate requests for production on Flowers/ Thomasville.

As to the specific interrogatories and requests for admission, we believe the following accurately reflects our discussion last week:

**Interrogatories**

**Interrogatory Nos. 3 & 4:**

Plaintiffs clarified that these interrogatories seek the identification of what is used to track various purchases, on a national level and on a local level. Defendants agreed they would revisit providing further responses in light of this clarification.

**Interrogatory No. 5:**

Plaintiffs clarified that this interrogatory seeks to know any alternate means of delivering fresh baked products. Defendants agreed they would revisit providing further responses in light of this clarification.

**Interrogatory No. 6:**

Defendants have responded that the only policy on whether distributors can distribute other product is in the contained in the independent distributor contract and have confirmed that there are no policy documents on this issue.

**Interrogatory No. 7:**

In addition to the response set forth in the interrogatory, Defendants confirmed that Flowers Industries wanted a model developed that was similar to other contracts in the bread industry, so they contacted outside counsel and that no person within Flowers Industries drafted any portion of the distributor agreement.

**Interrogatory Nos. 8 & 9:**

Defendant will revisit these interrogatories with respect to the new Defendant, Flowers/ Thomasville.

Kevin P. Hishta  
November 26, 2007  
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**Interrogatory Nos 15 & 16:**

Defendants have further clarified their response by providing that Flowers/Opelika and Flowers/ Thomasville bear most of the burden of the price allowance and that distributors need to seek approval to change prices on the bakery products.

**Interrogatory No. 19:**

Flowers Foods confirms that it does not have any thrift stores.

**Interrogatory No. 20:**

Flowers/Opelika does not have regular company-run sales routes but rather certain instances where company-run routes may exist. Flowers/ Opelika stated that, in new market areas, there are company-run employee routes until that market area is sufficiently developed. Additionally, when a distributor sells his or her territory, an employee of the company will run the route until a new distributor is found.

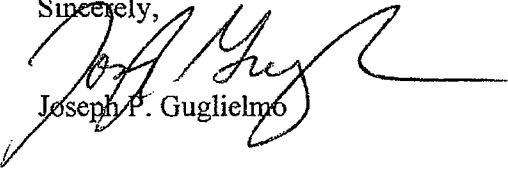
**Requests for Admission:**

**Request for Admission No. 18:**

Regarding whether distributors are required to sell their stale products on a daily basis, Flowers admitted that, for a distributor to sell product back to Flowers, he or she must sell the product back within a certain time frame in order for Flowers to use it in their thrift stores. If a distributor does not sell it back within the designated time frame, Flowers will not buy the stale product.

If you disagree with any of the information above, please contact me.

Sincerely,

  
Joseph P. Guglielmo

JPG:ar

cc: Sandra Reiss  
Greg L. Davis  
E. Kirk Wood  
Joe R. Whatley, Jr.  
Amy Weaver

## EXHIBIT B

D. ROACH

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

CHARLES MORROW and MICHAEL  
OVERTON, individually and on  
behalf of similarly situated  
employees,

Plaintiffs,

vs.

CIVIL ACTION NO.

3:07-CV-617-MHT

FLOWERS FOODS, INC., AND  
FLOWERS BAKING CO., OF  
OPELIKA, LLC,  
Defendants.

~~~~~

VIDEOTAPED DEPOSITION OF

DAVID M. ROACH

January 30, 2008

9:50 a.m.

Ogletree Deakins Nash Smoak & Stewart, P.C.

2100 Bank of America Plaza

600 Peachtree Street

Atlanta, GA 30308

Thomas R. Carey, CCR-B-1715

VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

D. ROACH

Page 2

1 APPEARANCES OF COUNSEL

2

3 On behalf of the Plaintiffs:

4 JOSEPH P. GUGLIELMO, Esq.

5 AMY A. WEAVER, Esq.

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7 1540 Broadway, 37th Floor

8 New York, NY 10036

9 (212) 447-7070

10 (212) 447-7077

11 jguglielmo@wdklaw.com

12

13 On Behalf of the Plaintiffs:

14 GREG L. DAVIS, Esq.

15 The Law Office Of Greg L. Davis

16 6987 Halcyon Park Drive

17 Montgomery, AL 36117

18 (334) 832-9080

19 gldavis@knology.net

20

21

22

23

24

25

D. ROACH

Page 3

1 APPEARANCES OF COUNSEL (continued)

2

3 On behalf of the Defendants:

4 KEVIN P. HISHTA, Esq.

5 DAVID H. GRIGEREIT, Esq.

6 MARGARET E. SANTEN, Esq.

7 Ogletree Deakins Nash Smoak & Stewart, P.C.

8 2100 Bank of America Plaza

9 600 Peachtree Street

10 Atlanta, GA 30308

11 (404) 881-1300

12 (404) 870-1732

13 kevin.hishta@ogletreedeakins.com

14

15 Also present: Videographer Ben Jones

16 Stephanie B. Tillman, Esq.

17 Vice President and Associate

18 General Counsel Flowers Foods, Inc.

19

20

21

22

23

24

25

D. ROACH

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1 DISCLOSURE

2

3 Pursuant to Article 8(B) of the Rules and  
4 Regulations of the Board of Court Reporting of the  
5 Judicial Council of Georgia, I make the following  
6 disclosure:

7 I am a Georgia Certified Court Reporter,  
8 here as a representative of Brown & Gallo, L.L.C.,  
9 to report the foregoing matter. Brown & Gallo,  
10 L.L.C., is not taking this deposition under any  
11 contract that is prohibited by O.C.G.A. 5-14-37  
12 (a) and (b).

13 Brown & Gallo, L.L.C., has agreed to  
14 provide reporting services for VERITEXT, LLC - NY,  
15 the terms of which are as follows:

16 The above mentioned referring firm will do  
17 production and billing of transcripts of this matter.

18

19

20

21

22

23

24

25

VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

D. ROACH

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1 Videotaped Deposition of David M. Roach

2 January 30 2008

3

4 VIDEOGRAPHER: Today's date is January 30,  
5 2008. The time is approximately 9:45 a.m. The  
6 location is 600 Peachtree Street, Northeast  
7 Atlanta, Georgia, 30308. The deponent is Mr.  
8 David Roach. Will counsel please identify  
9 themselves for the record.

10 MR. GUGLIELMO: Joseph Guglielmo, for  
11 Whatley, Drake & Kallas for the plaintiffs.

12 MS. WEAVER: Amy Weaver, Whatley, Drake &  
13 Kallas for Plaintiffs.

14 MR. DAVIS: Greg Davis for plaintiffs.

15 MS. TILLMAN: Stephanie Tillman for  
16 Flowers Foods.

17 MS. SANTEN: Maggie Santen Handerhan with  
18 Ogletree Deakins for defendants.

19 MR. GRIGEREIT: David Grigereit, Ogletree  
20 Deakins for defendants.

21 MR. HISHTA: Kevin Hishta with Ogletree  
22 Deakins for the defendants.

23 VIDEOGRAPHER: Will the Court Reporter  
24 please swear in the witness.

25 (WHEREUPON, a brief recess was

D. ROACH

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1 taken)

2 DAVID M. ROACH, having been first duly  
3 sworn, was examined and testified as follows:

4 MR. GUGLIELMO: Kevin, I think I just  
5 wanted to put the stipulation on the report  
6 with respect to the topics that Mr. Roach was  
7 going to testify to, this way we sort of have  
8 it for the record.

9 MR. HISHTA: Sure. Mr. Roach is Flowers  
10 Foods designee for inquiries five and six,  
11 which are identical. And those inquiries are  
12 Flowers Foods involvement with national  
13 accounts in plaintiff's respective territories,  
14 i.e. testimony regarding those national  
15 accounts that one or more of the plaintiffs  
16 actually sold products to from July 2, 2004 to  
17 date.

18 And prior to the deposition starting this  
19 morning, I have provided opposing counsel a  
20 list of the national accounts serviced by one  
21 or more plaintiffs as best as I can tell based  
22 on the records available to us. If for some  
23 reason another national account shows up that a  
24 plaintiff services or serviced, we would  
25 certainly let you know that.

D. ROACH

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1 MR. GUGLIELMO: Thank you.

2 EXAMINATION

3 BY-MR.GUGLIELMO:

4 Q Mr. Roach, my name is Joseph Guglielmo,  
5 I'm one of the attorneys representing the plaintiffs  
6 today. Could you please state your full name and  
7 address for the record?

8 A David Michael Roach. My address is 16  
9 Meander Trace, Thomasville, Georgia, 31792.

10 Q Mr. Roach, I'm going to go over some of  
11 the ground rules or instructions for a deposition.  
12 I'm going to be asking you questions today. If you  
13 don't understand a question I ask, please just say  
14 so and then I'll rephrase the question or try to  
15 give you a better question.

16 A Okay.

17 Q I would like for you to provide verbal  
18 responses to the questions that I ask, yes's and  
19 no's. No nods of the head, or uh-huh, or huh-uh.  
20 Although we have a videographer here today, just so  
21 we have a clear record, transcript, we require  
22 verbal, at least request verbal responses.

23 Let me finish a question before you  
24 answer, and this is so we have a clear record so  
25 there is no overlapping and the Court Reporter

D. ROACH

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1 doesn't mistake a question of mine as an answer of  
2 yours.

3 If you need to take a break at any  
4 time, let me know. I'm glad to oblige. Do you  
5 understand these instructions I've just provided?

6 A Yes.

7 Q You understand also that you've been sworn  
8 in now and that you are under oath, and that your  
9 testimony is as if you were before a Judge, before a  
10 court of law?

11 A Yes.

12 Q That you are supposed to answer truthfully  
13 and to the best of your ability?

14 A Yes.

15 Q Likewise, if there is a particular  
16 question I ask and you don't know the answer, or you  
17 don't recall, just say so. I don't want you to  
18 speculate and I don't want you to guess?

19 A Okay.

20 Q Just, again, I want you to answer  
21 truthfully and to the best of your knowledge.

22 Is there anything that we should know  
23 today that would prevent you from testifying  
24 truthfully and to the best of your ability?

25 A No.

D. ROACH

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1 Q Mr. Roach, have you ever been deposed  
2 before?

3 A No.

4 Q Have you ever provided any testimony under  
5 oath?

6 A No.

7 Q Without getting into any of your  
8 attorney/client communications or any work-product  
9 privileges that your client, that your attorney may  
10 have, can you generally describe for me what you did  
11 to prepare for this deposition?

12 A Yes, we had one conference call with  
13 counsel and one meeting last week with counsel.  
14 And, you know, I did contact a couple of my account  
15 guys to kind of brush me up on a few things that I  
16 might have had questions on.

17 Q Okay. And with respect to the conference  
18 call that you just identified, can you tell me who  
19 were the participants?

20 A Yes. It was Kevin, myself and Chuck Rich.

21 Q Anyone else?

22 A David Dodge, which is one of my account  
23 guys came in on one of the calls for a few minutes.  
24 That would be it.

25 Q What is Mr. Dodge's title or position?

D. ROACH

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1           A     He is a Vice President of National  
2     Accounts. He is a responsible for Dollar Stores.

3           Q     Do you know how long that first conference  
4     call took place?

5           A     I would say a couple of hours.

6           Q     Okay. Then with respect to, I guess an  
7     in-face meeting you had with counsel, can you also,  
8     can you identify for me who was present during that  
9     meeting?

10          A     Kevin David and Chuck Rich.

11          Q     Anyone else?

12          A     That was it.

13          Q     Do you know, can you tell me the duration  
14     of that meeting?

15          A     It was an all-day meeting.

16          Q     I think you also mentioned a little while  
17     ago that you contacted some of your account guys, I  
18     guess?

19          A     Yes, National Account Managers.

20          Q     Can you tell me who those people were?

21          A     At Wal-Mart we have Doug Brown. At Dollar  
22     Stores I have David Dodge. Winn-Dixie I have Robert  
23     Meadows. Bruno's I have David Johnson. And some of  
24     those guys are actually responsible for more than  
25     one account. And then food service I have Jeff

D. ROACH

Page 11

1 Strain.

2 Q Without getting into any specifics of any  
3 attorney/client privilege you may have, can you just  
4 tell me the purpose of your discussions with these  
5 individuals?

6 A Just to make sure if I understood how we  
7 were, you know, a lot of times we have zones or  
8 things like that. Just trying to refresh my memory  
9 on how many zones are at, how many zones we have  
10 with different accounts, things like that.

11 Q Do you know approximately how long your  
12 discussions or meetings with these people were?

13 A Five to ten minutes.

14 Q Each?

15 A Yes.

16 Q Did you speak with anyone else in  
17 preparation for your deposition today?

18 A No.

19 Q Again, without getting into any  
20 attorney/client or work-product privileges you may  
21 have, describe for me generally any documents you  
22 may have reviewed in preparation for today?

23 A I did supply a map for the zones at  
24 Wal-Mart. The, outside of that it would just be the  
25 E-mail, E-mail responses.

D. ROACH

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1 Q Do you know if your counsel has produced  
2 those documents in connection with this litigation?

3 A I don't know.

4 MR. HISHTA: We haven't produced the  
5 E-mail. I haven't produced the Wal-Mart  
6 regional map. If it's responsive, you'll  
7 certainly get it.

8 Q (By Mr. Guglielmo) Are there any other  
9 documents that may be in your possession, either in  
10 your office or in your home, that may be responsive  
11 to any of the topics that you're going to testify to  
12 today?

13 A I'm not sure.

14 MR. HISHTA: For the record, we've  
15 provided for purposes of the 30(b)(6) a  
16 representative sampling of E-mail  
17 correspondence and other documents, electronic  
18 and otherwise, with a cross section of the  
19 national accounts.

20 Certainly there are other documents that  
21 are potentially relevant to issues with respect  
22 to the national accounts, and the understanding  
23 with counsel, as I understand it, was that  
24 y'all would utilize that representative  
25 sampling and then we would discuss further

D. ROACH

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1       whether or not additional documents would be  
2       needed.

3               And just to follow-up on that point. Per  
4       the Court's Order of November 27th, that is the  
5       understanding that the Court approved.

6               MR. GUGLIELMO: I'm just trying to  
7       understand whether there is any documents that  
8       Mr. Roach is aware of that are in his  
9       possession that may be responsive to the  
10      testimony provided today that he may or may not  
11      have produced, you know, or things that we may  
12      be discussing, so --

13              MR. HISHTA: The only one that I can think  
14      of, Joseph, is the map or where we were trying  
15      to figure out how many areas were serviced by,  
16      how many Wal-Mart zones or regions were  
17      serviced by Flowers Foods subsidiaries. And I  
18      tried to make a copy of it the other day, and  
19      it's so small I could not enlarge it. But I'll  
20      attempt to do so and provide you a copy.

21              MR. GUGLIELMO: Okay.

22              Q       (By Mr. Guglielmo) Mr. Roach, can you  
23      briefly describe for me your educational background  
24      beginning with graduation from high school?

25              A       Yes. Graduated from high school at

D. ROACH

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1 Southland Academy in Americas, Georgia. And I went  
2 to college at the University of Georgia, as well as  
3 Georgia Southwestern College where I graduated with  
4 a Marketing Degree.

5 Q Do you have any, do you have any  
6 post-graduate Degrees or any certificate studies?

7 A No.

8 Q Do you hold any licenses, professional  
9 licenses?

10 A No.

11 Q Can you tell me what your current title or  
12 position is?

13 A My current title is President of Flowers  
14 Baking Company of Villa Rica.

15 Q For how long have you held that position?

16 A Since mid December.

17 Q Of 2006?

18 A Of 2007.

19 Q Forgot what year it was. Can you briefly  
20 describe for me your duties and responsibilities as  
21 the Vice President of Flowers Baking Company?

22 MR. HISHTA: Actually President.

23 MR. GUGLIELMO: I'm sorry.

24 THE WITNESS: Flowers Baking Company in  
25 Villa Rica?

D. ROACH

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1 MR. GUGLIELMO: Yes.

2 THE WITNESS: I mean, I'm totally  
3 responsible for P&L responsibilities, sales  
4 responsibilities, manufacturing  
5 responsibilities, anything that is involved  
6 with the Flowers Baking Company of Villa Rica.

7 Q (By Mr. Guglielmo) By P&L responsibility,  
8 can you provide me some more description?

9 A Yes, we have a profit and loss statement  
10 that each subsidiary has of Flowers. But I'm  
11 responsible for the one that is respective to Villa  
12 Rica.

13 Q And in terms of a sales responsibility,  
14 can you describe for me a little bit more what you  
15 mean by that?

16 A Well, we have a sales management team.  
17 The, I have two Vice Presidents of sales. I have an  
18 account management team. I also have a sales team  
19 made up of Directors of Sales, Sales Managers and  
20 Operations Managers. And those guys are the, that's  
21 the team that assists and supports the  
22 distributorship program.

23 Q And do these, do the sales management  
24 team, does the, do the personnel within the sales  
25 management team report to you?

D. ROACH

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1           A     Well, the two VP's report to me. The  
2     Directors report to the VP. The Sales Managers to  
3     the Director. And the Operations Managers to the  
4     Sales Managers.

5           Q     Okay. And so there would be a Director in  
6     charge of the sales management team; is that  
7     correct?

8           A     A Director would be responsible for, and  
9     it varies from Director to Director, for two to  
10    three warehouses. Each warehouse would house,  
11    typically house a Sales Manager and an OEM. And  
12    depending on the number of routes, it could be more.

13          Q     What would the Sales Manager's  
14    responsibilities be?

15          A     He is, the Sales Manager's responsibility  
16    is to assist the distributors in their market areas.  
17    He'll actually go to an account, and within that  
18    account he will try and help secure displays. He's  
19    a communication link from between Flowers Baking  
20    Company of Villa Rica and the distributor.

21                     So he's a vital, his most important  
22    role is to communicate with that distributor on  
23    sales activities and assist him in getting displays,  
24    et cetera.

25          Q     And then he communicates with the Director

D. ROACH

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1 of the sales team, correct?

2 A Yes. Like a Director will have three  
3 warehouses, a Sales Manager will be over one of  
4 those warehouses.

5 Q So there will be a Sales Manager per each  
6 warehouse?

7 A Typically. Now, if you have a lot of  
8 routes in one warehouse, you might have two Sales  
9 Managers in that warehouse.

10 Q Does the Sales Manager within the  
11 warehouse also deal with distributor issues  
12 pertaining to national accounts?

13 A The sales, the subsidiaries deal with the  
14 distributor issues. The national accounts team does  
15 not deal with the distributor issues.

16 Q By the subsidiaries, what are you  
17 referring to, the bakery?

18 A Each individual bakery. Flowers Baking  
19 Company of Villa Rica, Flowers Baking Company of  
20 Opelika, Flowers Baking Company of Thomasville, for  
21 example.

22 Q So I'm clear, you're saying the national  
23 accounts team, what are you referring to?

24 A The national accounts team is part of  
25 Flowers Foods, or Flowers Bakeries, that team is,

D. ROACH

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1 this team was developed because our customers  
2 actually demanded that we get set up this way.

3 This team is only for the big  
4 accounts, the national-type accounts like a Wal-Mart  
5 or Winn-Dixie. And these, the national account team  
6 like a Wal-Mart, for example, will cover several  
7 bakeries. The Wal-Mart will cover every bakery that  
8 we have in the company.

9 So this national accounts team is to  
10 be one point of contact. Our customers insisted  
11 that we be, that we have one point of contact. And  
12 that is really the reason that this national account  
13 team was developed to have one person communicating  
14 with an account.

15 Q Do you know when, approximately, this  
16 national accounts team was developed?

17 A I don't know exactly. I would say six,  
18 seven years ago.

19 Q Do you know who are the members of the  
20 national account team, presently?

21 A Yes. It's the guys that I mentioned to  
22 you earlier, that is part of the national accounts  
23 team.

24 Q So some of the individuals you were  
25 speaking of earlier that you spoke with?

D. ROACH

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1           A     Yes. Just to keep it clear, there is  
2     Flowers Baking Company of Villa Rica, which I'm  
3     responsible for now. And previously I was Vice  
4     President of Sales and National Accounts, and that's  
5     two separate things going on here.

6           Q     Okay. So I take it, to follow that,  
7     follow what you just said. While you were in the  
8     position of Vice President of Sales for National  
9     Accounts --

10          A     Right.

11          Q     -- you oversaw individuals who were  
12     responsible for each individual national account?

13          A     That's correct.

14          Q     So the individuals you mentioned, for  
15     example, David Dodge, was responsible for a  
16     particular national account?

17          A     Yes.

18          Q     And would report to you on the activities  
19     relating to them?

20          A     Yes.

21          Q     And so, just so I understand again, with  
22     respect, for example, take Mr. Dodge, what would be  
23     his responsibilities or duties as, with respect to  
24     the national accounts?

25          A     Okay. His responsibilities would be to

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1 communicate what -- you know, one thing he does is  
2 takes, he will take a plan that has been developed  
3 to Dollar General. Dollar General will want, for  
4 example, Dollar General has six different pricing  
5 zones. And those six zones we have taken, we fit  
6 the bakeries within the zone that closely aligns  
7 with that market pricing.

8                   So the zones are actually, we're  
9 limited to the number of zones that we can have in  
10 Dollar General, and that is determined by Dollar  
11 General. They limit us to six zones.

12           Q     And can you describe for me the purpose of  
13 establishing the zones?

14           A     It is to limit the amount of work that  
15 comes into Dollar General. They don't want to have  
16 50 people handling accounting work.

17           Q     But are zones created based on location of  
18 a particular Dollar General stores throughout the  
19 Flowers network?

20           A     Yes. It's basically set up where we  
21 have -- we have six zones that were set up between  
22 Dollar General and David Dodge. Once those zones  
23 were established, the plant's current market pricing  
24 was fit into the zone that most closely aligned with  
25 that market pricing.

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1 Q Can you give me an example of what you  
2 mean by that, the plant's market pricing fits within  
3 the zone?

4 A Yes.

5 Q What does this mean in sort of a --

6 A Okay. Zone one may be Giant bread, maybe  
7 \$1.19, Old Fashioned, \$1.29. Zone two, Giant bread  
8 pricing may be \$1.50. So Thomasville, Flowers  
9 Baking Company of Thomasville may fit into price  
10 zone one, where Flowers Baking Company of Villa Rica  
11 may fit into price zone two because of the  
12 difference in the pricing in that market.

13 Q So the particular bakery would manufacture  
14 bread that would be sold to a particular zone for  
15 Dollar General?

16 A Well, we reciprocate all throughout the  
17 plants, so that is not totally true.

18 Q Okay. I just want to understand. So how  
19 would that work with respect to, like the example  
20 you just gave. You have a zone one, and they have a  
21 particular type of product, the Old Fashioned  
22 product?

23 A Right.

24 Q How would that, how is that function of  
25 establishing zones and overlaying those zones with

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1 respect to the bakeries, how does that function in  
2 ultimately providing the product to the distributor?  
3 How does that work?

4 A I'm not sure I understand your question.

5 MR. HISHTA: Let me just, I think it's  
6 confusing for the witness because we're dealing  
7 with two separate issues, a pricing issue  
8 versus ordering the products.

9 MR. GUGLIELMO: And I'm just trying to  
10 understand the structure issue right now. I'm  
11 putting my structure, I want you to put your  
12 structure hat on.

13 THE WITNESS: Right.

14 Q (By Mr. Guglielmo) You said, for example,  
15 there are six zones between Dollar General and --

16 A This is also brand pricing zone. In  
17 Dollar General we also have private label. Now, we  
18 don't have private label in the regular Dollar  
19 General stores, we have it in the Dollar General  
20 market stores. There is only one price for private  
21 label. But for brand --

22 Q I mean, one price is the price that is --

23 A Company wide.

24 Q The price that is sold, the price that  
25 bread is sold to Dollar General is what you're

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1 referring to?

2 A That's correct. Wholesale price.

3 Q And how do the zones work together to  
4 manufacture product?

5 A Well, the manufacturing doesn't fit into  
6 the zones.

7 Q Okay. I'm just, maybe I'm just -- I'm  
8 getting confused. I think I've asked this, but I  
9 apologize.

10 A Let me, I might clarify something here.  
11 The zone pricing will be closely aligned with, to  
12 make the distributors and help them be competitive  
13 in certain markets, that's where those zones are set  
14 up, that is one of the reasons those zones are set  
15 up that way.

16 Q So are zones are set up more along the  
17 lines of what the territory structure of the various  
18 territories are set up?

19 A No. No. Because they limit us to six.  
20 We have, you know, 20-some odd bakeries, so, we are  
21 limited to the number of zones we can set up. But  
22 that is determined by the account.

23 Q But just so I'm clear, again, the six  
24 zones are pricing zones, is what you are saying?

25 A That's correct.

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1 Q Okay. And are, those six pricing zones  
2 overlap the entire territory that the route  
3 distributor served?

4 A That Flowers serves Dollar General stores,  
5 yes.

6 Q Okay. And is that different than what the  
7 route distributors serve?

8 A No.

9 Q Is that the same?

10 A Yes. The Flowers distributorship, we  
11 don't serve all Dollar General stores, so, the areas  
12 that we do service, that those distributors will fit  
13 into one of those zones.

14 Q And, again, so I understand this. The six  
15 zones are pricing, they're basically pricing zones,  
16 they're not like a territorial area?

17 A No.

18 Q And do you have an understanding of why  
19 they're set up for, why there is different pricing  
20 zones?

21 A Why?

22 Q Yes.

23 A To make us, to make the distributor as  
24 competitive as possible in each area. What they  
25 would like to have is one price everywhere. We have

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1 convinced them to at least give us six zones, they  
2 have limited us to six. So that's the reason for  
3 the zones.

4 Q Okay. Let me take another step back. So  
5 is Mr. Dodge responsible for communicating with  
6 Dollar General on the, on the, on the national  
7 account, on the Dollar General account?

8 A Yes.

9 Q So he's got day-to-day responsibility for  
10 communicating with Dollar General?

11 A Yes, he does.

12 Q Does anyone else have sort of that  
13 responsibility with respect to Dollar General?

14 A No.

15 Q Then while, I assume that Mr. Dodge then  
16 reported to you while you were the Vice President of  
17 Sales for national accounts, correct?

18 A Correct.

19 Q Then who did you report to when you were  
20 the Vice President of Sales for national accounts?

21 A I reported to Gene Lord, who was the  
22 President of the Bakery Division.

23 Q Then who did Mr. Lord report to with  
24 respect -- I'm sorry. Who did Mr. Lord report to?

25 A He reported to George Deese, who is CEO,

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1 Chairman.

2 Q And did Mr. Deese report to anybody?

3 A Just the Board.

4 Q This structure, for example, with respect  
5 to establishing a national accounts team, that  
6 occurred on or about six years ago, you said?

7 A Yes, approximately.

8 Q And is there, so I'm clear, is there, as  
9 part of the national accounts team, is there a  
10 particular person responsible for each national  
11 account at Flowers?

12 A Yes.

13 Q Okay. Could there be more than one  
14 person?

15 A No.

16 Q So with respect to, for example, Wal-Mart,  
17 is there a person that is responsible for dealing  
18 with that national account?

19 A Yes. Well, at Wal-Mart we have one lead  
20 person.

21 Q Who is that?

22 A That person is Doug Brown.

23 Q Doug Brown?

24 A Right.

25 Q What is Mr. Brown's title or position?

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1           A     His title is Executive Vice President of  
2     National Accounts, Wal-Mart.

3           Q     And then?

4           A     Then under him I have Bobby Massanelli.

5           Q     What is Mr. Massanelli's title?

6           A     He's Vice President of National Accounts.

7           Q     And then?

8           A     And Bobby Cause, he actually is the sales  
9     guy that makes the call on Wal-Mart.

10          Q     By the "call" on it, you mean he's the one  
11     that, for example, if there's a new store that is  
12     coming within a Flowers, where Flowers serves --

13          A     Right.

14          Q     -- Flowers can serve, he would make the  
15     call on the particular Wal-Mart entity to see if  
16     they can negotiate a deal to sell bread?

17          A     Wal-Mart would actually let him know they  
18     have a store opening in a certain area, and then he  
19     would in turn let them know whether or not we could  
20     service it.

21          Q     Take me through the steps of how that  
22     works, like that example?

23          A     Yes. Sure. As I said, Wal-Mart will let  
24     us know what, where the stores are opening and the  
25     date they will be opening. They will, they're

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1 asking can we service this account. We let them  
2 know whether or not we, it falls within the service  
3 area that we, that we're currently distributing in.

4 And once they know that at Wal-Mart,  
5 Wal-Mart does have private label in their stores.  
6 The private-label business is, they don't actually  
7 bid each store, they used to, but they don't any  
8 more. They have zones set up as well. Within each  
9 zone we have a price, a private label bid price that  
10 had been established. And within that, if they say  
11 that we can service the store, they know what our  
12 price is in that zone, and they determine who will  
13 take on that private label for that account. As  
14 well as they will allocate a certain amount of  
15 branded space in that account as well.

16 Q Let me break this down. So Wal-Mart then  
17 would reach out to Mr. --

18 A Massanelli.

19 Q -- Massanelli, and then would there be an  
20 addendum to a master contract, or would there be a  
21 contract entered into between Wal-Mart and Flowers?

22 A There are no contracts with Wal-Mart.

23 Q Okay. How are, I guess then, how is the,  
24 you said there is a bid price --

25 A Yes.

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1 Q -- within a particular zones, I guess?

2 A He'll give it to me, but he can take it  
3 away any time he wants.

4 Q Okay. So how is the bid price  
5 established?

6 A The bid price is established by the, each  
7 subsidiary -- at some point that when the zones were  
8 set up, which that was prior to me, but zones were  
9 set up to prevent him from having so much work with  
10 each individual store having a bid. So that the  
11 pricing was there and they wouldn't have to go get  
12 pricing every time a store opened up because they  
13 have so many stores opening.

14 The Regional VP would have been  
15 involved with setting up the zone pricing, because  
16 zone pricing covers several different plants. So  
17 that Regional VP would have been involved in that  
18 process.

19 Q So the Regional VP, is that the Regional  
20 VP of the Bakery, or Flowers Baking Group?

21 A He works for Flowers Bakeries Group.

22 Q And who would he work with, would he work  
23 with Mr. Massanelli in this example?

24 A In my current role as Flowers Baking  
25 Company Villa Rica, President there, he would assist

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1 me, he would kind of give me direction and  
2 assistance. So he's actually, he works along with  
3 the national accounts group. He also works along  
4 with the operations side of the business.

5 Q Okay. So the steps would be, the first  
6 step would be Wal-Mart would approach him. Then in  
7 the process of confirming the bid price, or  
8 establishing the bid price, at some point he would  
9 have then reached out to someone like, someone in  
10 your position to establish that bid price?

11 A At some point in the past that would have  
12 been established. After that bid, after that price  
13 was established, now when we have ingredient cost  
14 increases and things like that, we'll just, we take  
15 that cost increase to Wal-Mart, and it just raises  
16 that price in that zone. So we don't, we are not in  
17 a process of rebidding all the time and establishing  
18 new prices outside of, you know, seeing a commodity  
19 increase or something like that.

20 Q So it's not an annual review of the prices  
21 that y'all negotiate with Wal-Mart, it's sort of ad  
22 hoc?

23 A Well, ad hoc, if, meaning when we have  
24 cost increases, yes.

25 Q Okay. So how many zones, did you mention

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1 how many zones there were with respect to Wal-Mart?

2 A I believe there are six zones.

3 Q And the six zones cover the various  
4 distributor territories that are serviced by the  
5 independent distributors?

6 A There are six zones that Flowers covers,  
7 that Flowers distributorships cover. So the, there  
8 is not, there may be more zones than that, but we  
9 don't cover the entire U.S. So --

10 Q It's based on where Flowers is serving,  
11 where Flowers geographic limits are with respect to  
12 its product?

13 A Right.

14 Q In other words, Flowers doesn't serve  
15 bread or doesn't manufacture bread in California, so  
16 there may be a zone in California for Wal-Mart, but  
17 you guys don't serve it?

18 A That's correct.

19 Q That makes sense. And so you mentioned a  
20 private label, is that the bid price? Is that the  
21 same, is that set up the same way with respect to  
22 private-label products too?

23 MR. HISHTA: That is private label.

24 Q (By Mr. Guglielmo) Oh, okay. So all of  
25 those answers are with respect to private label?

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1 A That's correct.

2 Q Take me -- how are the --

3 A Brand prices.

4 Q -- brand prices, how are those --

5 A Brand prices do come from each subsidiary.

6 So each plant, with respect to what is going on in

7 their market, the comparative, the competitiveness

8 in the markets. You have regional players, for

9 example, that may drive the price down in certain

10 markets, but the subsidiaries actually have their

11 own pricing. So that's, that is given to Bobby

12 Massanelli. He gets it approved by the buyer, and

13 then once it's approved, that's what the price is

14 for that system. So that is all done by each plant.

15 Q Now, how is that, like you said, there is

16 sort of a bid price with respect to the

17 private-label product?

18 A Right.

19 Q How are the prices for particular branded

20 products communicated to Wal-Mart in that example?

21 A Well, the plant VP would turn that

22 information into Bobby Massanelli. He would in turn

23 get it approved by Janet Sullivan, who is the, one

24 of the buyers at Wal-Mart. Once we have pricing

25 established in a market for Flowers Baking Company

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1 of Opelika, for example, if they have certain  
2 branded pricing that is established in that market,  
3 when a new store opens up, that pricing is actually  
4 put into that store. So it's, it doesn't have to be  
5 reviewed each time, you know, when a new one comes  
6 into the market.

7 Q And our prices sort of, are they ad hoc in  
8 that, the way they were with private label, in  
9 that --

10 A Yes.

11 Q -- as commodities increase, that they will  
12 report that to Wal-Mart?

13 A Yes.

14 Q So with the particular -- is the zone  
15 structure, does that apply to the branded product  
16 too?

17 A The zones, the zones are specific to the  
18 plants. The, I mean, the plant's pricing is  
19 specific to the stores. The zone pricing is only  
20 specific to private label.

21 Q Okay. But with respect to a particular  
22 Wal-Mart, let's say there is a Wal-Mart that falls  
23 within Opelika's territory.

24 A Zones mean nothing to brand.

25 Q Okay. But with respect to -- again, I'm

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1 going to take a step back.

2 A Okay.

3 Q If you have a Wal-Mart within the Opelika  
4 territory, how are -- does Opelika communicate  
5 prices for all of the products that Wal-Mart is  
6 going to put in its stores, the branded products?

7 A Yes.

8 Q It communicates it to Mr. Massanelli?

9 A Yes.

10 Q And that includes, I would assume, based  
11 on my understanding yesterday, that would include  
12 products that Opelika doesn't make?

13 A That's correct.

14 Q So it includes products from other --

15 A Yes. Opelika only produces buns and  
16 rolls. Flowers Baking Company of Villa Rica will  
17 make that product, make the bread products for them,  
18 the local breads. We will sell it to Opelika.

19 Q Under a reciprocal arrangement?

20 A Yes. We sell the product to Opelika,  
21 Opelika in turn sells the product to the  
22 distributor.

23 Q Okay. And with respect to Villa Rica,  
24 where you are at now, I assume they then sell the  
25 bun products to y'all?

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1 A They do.

2 Q Okay. To service these, ultimately to the  
3 distributor to service the national account?

4 A That's correct.

5 Q Okay. So if Mr. Brown and Mr. Massanelli  
6 with respect to dealing, they deal with the Wal-Mart  
7 national account. Are there any other individuals  
8 besides Mr. Brown and Mr. Massanelli that deal with  
9 the national account?

10 A Yes, we have Michael Anderson, he's  
11 actually a Specialty employee, Flowers Specialty  
12 employee. He calls on Wal-Mart with cake. And we  
13 also have -- well, it's not, that would be all the  
14 Wal-Mart. In that same office we have one guy,  
15 Shane Redd, who calls on Sam's Club.

16 Q Now, explain to me what Mr. Anderson does  
17 with respect to the specialty products?

18 A Okay. He calls on Wal-Mart with cake,  
19 period. Whether it be, you know, something, Blue  
20 Bird, which is carried on your DSD routes, or Mrs.  
21 Freshley's, which is a warehouse product.

22 So he actually, he makes that sales  
23 call. All the pricing and everything for the  
24 Freshley's product is derived from the Specialty  
25 Division. And then the Blue Bird pricing is derived

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1 from the Bakery Foods Division, or Bakery Division.

2 Q So Mr. Anderson would then negotiate the  
3 prices for all of the specialty products that would  
4 be placed in all of the Wal-Mart stores?

5 A The Specialty Division has Mrs. Freshley's  
6 brand. He would be, he will, he does call on  
7 Wal-Mart with specialty products. The pricing is  
8 actually done by Mark Courtney, who is Executive VP  
9 of, on the Specialty Division side.

10 Q Is he --

11 A Michael is, he's the carrier. I mean, he  
12 will basically take and sell, you know, make the  
13 sales call. But Mark Courtney is ultimately the guy  
14 responsible for the pricing.

15 Q He's the Executive Vice President of  
16 Flowers Baking Group?

17 A No, he's on Flowers Specialty Group.

18 Q Okay. And you mentioned Shane, Shane  
19 Redd?

20 A Shane Redd.

21 Q Who is that?

22 A He's on the national accounts team, and he  
23 calls on Sam's Club.

24 Q Does he perform the same function that Mr.  
25 Anderson performs, but with respect to Sam's Club?

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1 A Yes. Well --

2 Q Specialty products and the Mrs.  
3 Freshley's?

4 A Yes. He actually calls on, for the Bakers  
5 Group. Shane calls on Sam's Club for the Bakeries  
6 Group. But he does bread, not cake.

7 Q Does someone do the cake product for Sam's  
8 Club?

9 A Yes, Michael Anderson does.

10 Q Oh, he does. Okay. So he does --

11 A He does all cake.

12 Q For both Sam's and Wal-Mart?

13 A And Wal-Mart.

14 Q All right. Now, other than these  
15 individuals that you just mentioned, is there anyone  
16 else that is in charge of the Wal-Mart account?

17 A No. I mean, Regional VPs, you know, will  
18 have some influence on the private label, which we  
19 discussed earlier, but as far as being responsible  
20 for calling on the national accounts, that's the  
21 group.

22 Q Okay. And just so I don't -- we discussed  
23 Wal-Mart and we've discussed Dollar General. Is the  
24 structure that you've described, I think with  
25 respect to Wal-Mart or Dollar General, is that the

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1 same basic structure that would apply to national  
2 accounts like Family Dollar, or is it a, is it  
3 different per each national account?

4 A It's very different per each national  
5 account. But when you talk about Dollar General,  
6 Family Dollar, those are similar. But Wal-Mart to  
7 Dollar General is very different.

8 Q Is Wal-Mart, I'm sorry, is Dollar General  
9 more similar to the, I'm sorry, is the Family Dollar  
10 more similar to the Dollar General description?

11 A Yes.

12 Q Okay. So there are zones with respect to  
13 the Family Dollar?

14 A There are five zones at Family Dollar.

15 Q And the establishment of the -- who is the  
16 person in charge of the Family Dollar?

17 A David Dodge. Same guy.

18 Q Oh, he's in charge of both?

19 A Yes.

20 Q So is there private label, and --

21 A No.

22 Q Just branded product.

23 A Just branded, Family Dollar.

24 Q And, is the -- are there contracts entered  
25 into with Family Dollar, or is it the same type of

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1 situation that was entered into --

2 A No contracts.

3 Q Just bid, bid price?

4 A It's actually not even, the private label  
5 was a bid at one point with Dollar General. There  
6 are no contracts with either one, so they can get  
7 out, you know, at any time. We call on them to, you  
8 know, to say we can service you in this area. And  
9 they give us certain areas, certain areas they do  
10 not. We do have an advantage because we carry bread  
11 and cakes. So that is one reason we have so many  
12 Dollar Stores.

13 Q And how are, there is no contract, but how  
14 are prices determined for the Family Dollar national  
15 accounts?

16 A It's the exact same scenario as we  
17 discussed in Dollar General. They have the five  
18 zones instead of six, and the structure is set up  
19 the same way.

20 Q Is there anyone else other than David  
21 Dodge that is responsible for calling on Family  
22 Dollar?

23 A Not on the Bakeries Group.

24 Q What about Specialty Group?

25 A Specialty, I'm not sure. I believe they

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1 do have somebody calling on them, but I'm not  
2 positive on that.

3 Q Do you know the structure of how that  
4 works?

5 A I do not.

6 Q How about Fred's?

7 A Fred's is, again, David Dodge. We  
8 consider Fred's a Dollar-type store.

9 Q Is the arrangement there --

10 A There is no private label there, there is  
11 no contract.

12 Q Okay. But is David Dodge responsible for  
13 communicating the prices that ultimately get --

14 A Yes.

15 Q -- agreed upon with Fred's?

16 A Yes, he is. The difference with Fred's is  
17 it's all-branded product. No private label. And  
18 the, each plant or each subsidiary has their own  
19 pricing.

20 Q Are there zones set up with respect to  
21 Fred's?

22 A No.

23 Q So the subsidiaries provide the prices  
24 to --

25 A To David Dodge.

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1 Q -- to David Dodge, then David Dodge  
2 communicates those prices to?

3 A To the buyer.

4 Q And that depends on the area in which  
5 Fred's operates?

6 A That's correct.

7 Q So is it a store-by-store approach, or is  
8 it --

9 A It's, we service all of Fred's. So if a  
10 store, Fred's store opens up within our territory,  
11 we get it. And we are exclusive in those accounts,  
12 so there is no other bread in Fred's.

13 Q With respect to Publix, who is the person  
14 that is in charge of calling on Publix?

15 A Jim Williams.

16 Q What is his title or position?

17 A He is a Director of National Accounts.

18 Q And did he report to you when you were the  
19 Vice President of National Accounts?

20 A Yes.

21 Q What is Mr. Williams' responsibilities?

22 A His responsibility is, again,  
23 communicating whatever our strategic initiative is  
24 as a company to Publix. He also, in turn,  
25 communicates each subsidiaries' pricing. As we just

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1 discussed, each plant or subsidiary will send  
2 pricing to Jim. Jim will, in turn, turn that in at  
3 Publix.

4 Q So take me through that step. So, in  
5 other words, again, you would have a subsidiary, for  
6 example, Opelika makes the buns that we've all, we  
7 understand. That pricing would be then communicated  
8 along with the pricing for the Villa Rica  
9 products --

10 A Yes.

11 Q -- to them, as well, whatever other  
12 products Publix needs, it would sort of be, those  
13 prices would all be communicated to them. But if  
14 there are -- is that how it works?

15 A Well, Flowers Baking Company of Villa  
16 Rica, we would purchase buns from Opelika. We would  
17 establish what our market price is based on  
18 competition, based on costs, manufacturing costs, et  
19 cetera. We establish that. We send that to Jim to,  
20 for our pricing in the stores.

21 Q So the pricing for Publix, for example, is  
22 based on the bakery. So in other words, if there is  
23 a bakery that, if there is a Publix that is going to  
24 be served by the Villa Rica store, or the Villa Rica  
25 bakery, or the Villa Rica subsidiary --

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1 A Right.

2 Q -- the Villa Rica subsidiary would then  
3 obtain the prices for the various products and  
4 communicate those prices to Mr. Williams?

5 A That's correct.

6 Q And if there is Publix's that are going to  
7 be within the bakery area of Opelika, does Opelika  
8 then do the same?

9 A Yes, they do.

10 Q So then they solicit the prices from you  
11 with respect to the bread product?

12 A Costs.

13 Q And then that would then get ultimately  
14 put together with all the other products that Publix  
15 is seeking, and then that would be communicated over  
16 to --

17 A That's correct.

18 Q I don't know if I asked this. Is there a  
19 contract with Winn-Dixie?

20 A No. No at Publix either.

21 Q Okay. That was my question. All right.  
22 You answered my question, that was the next  
23 question.

24 So again, the prices would be the  
25 prices that are established between, or the prices

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1 would be the prices that are communicated by  
2 Williams, Mr. Williams to Publix. And then if there  
3 is a price increase because of, sort of commodities  
4 increase, would that then get the same type of  
5 treatment that you described with respect to the  
6 Dollar General situation?

7 A Yes. Yes. Pricing is basically -- let me  
8 add this. On branded pricing you are bottom up. I  
9 mean, it comes from the subsidiaries to the  
10 accounting guy for approval. And then that is the  
11 way it works on branded pricing, for the most part.

12 Q And does Mr. Williams handle specialty  
13 products too?

14 A He will call on them to sell some  
15 specialty products. We have not been very  
16 successful in doing so in Publix, so there is none  
17 there.

18 Q Okay.

19 A Does he call on them? Yes.

20 Q Is the situation with Winn-Dixie the same  
21 type of situation as you described with Publix?

22 A Winn-Dixie, we have, we do have the  
23 private-label business. There is no contract. The  
24 branded pricing situation is the same. The private  
25 label, we've had the private label in Winn-Dixie for

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1 many, many years. Before I started with the  
2 company, I believe.

3 So that pricing has worked in the  
4 sense that as we got commodity increases, we were  
5 able to take that and pass that on to the consumer.  
6 David Scott is a Regional VP that is actually the  
7 one most involved with the private-label pricing at  
8 Winn-Dixie.

9 Q Who calls on Winn-Dixie then with respect  
10 to the stores?

11 A Robert Meadows.

12 Q What is his title?

13 A He is a Director of National Accounts.

14 Q Anyone else call on Winn-Dixie with  
15 respect to the national account?

16 A No.

17 Q Is there a specific person with Specially  
18 Products that would call on them?

19 A The, Robert actually calls on them for  
20 specialty as well, but we don't have any specialty  
21 products, any Mrs. Freshley's product in there  
22 today.

23 Q And David Scott, what is his title?

24 A Regional Vice President.

25 Q Of Flowers Bakeries Group?

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1 A Of Flowers Bakeries Group, yes.

2 Q And the, you may have said this, but with  
3 respect to the private-label product at Winn-Dixie,  
4 is this a bid-type product, bid-type price?

5 A Like I said, I don't even know how many  
6 years ago it was, 15, 20 years ago, it was bid at  
7 that point. But since then it's just been with  
8 commodity increases we go to them and get the  
9 increase. So as a new store opens, there is no bid  
10 process. If it's within our territory, we get the  
11 business at the price we're at today.

12 Q Is it a zone situation, or a zone, is a  
13 zone set up or not?

14 A One private-label price.

15 Q For all of the Winn-Dixie, for all of the  
16 Winn-Dixie stores within the areas that Flowers  
17 Foods services?

18 A That's correct.

19 Q Okay.

20 A And that is private label. Again, bring  
21 the label from the subsidiaries.

22 Q Winn-Dixie?

23 A That's correct, Winn-Dixie.

24 Q I've had them. Bruno's, can you tell me  
25 who is responsible for calling on Bruno's?

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1 A Yes, David Johnson.

2 Q And what is his title?

3 A He is a VP of National Accounts.

4 Q What is his responsibility or duties?

5 A He's responsibilities are the same as the  
6 others, in communication and trying to generate, you  
7 know, generate sales opportunities for the  
8 distributors. I think, and I hadn't pointed this  
9 out, but I think one thing to point out is the fact  
10 that within all of these accounts, the distributor  
11 can go in and build that business, build a  
12 relationship with the store manager. Get end-caps,  
13 get displays here and there to increase his equity  
14 in his business.

15 So all of these accounts, outside of  
16 the programs that we have, they do have that  
17 opportunity to build and establish relationships  
18 themselves that promote their business.

19 Q So an end-cap, can you describe what that  
20 is?

21 A Yeah, at the end of an aisle in a grocery  
22 store, the seven or eight shelves on that end is the  
23 end-cap.

24 Q Okay. Is there anything else that you can  
25 recall that a distributor could do to build his

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1 business with a Winn-Dixie, for example?

2 A I mean, the relationship at store level is  
3 the biggest thing for him. And in his, if he has  
4 great service, he can build, he can build that  
5 relationship easily. So, you know, a lot lies on  
6 his shoulders as far as who can get additional space  
7 with the relationships that he builds. The  
8 relationship, a lot of times, is built through great  
9 service.

10 Q With respect to Bruno's --

11 A Yes.

12 Q -- is the, how is the, does Bruno's have a  
13 private label?

14 A Bruno's does have a private label. We do  
15 not have it currently.

16 Q So Bruno's purchases branded product?

17 A They do.

18 Q Flowers branded product?

19 A Yes.

20 Q And how is that, is there a contract  
21 between Bruno's and Flowers for the national  
22 accounts?

23 A There is no contract with Bruno's.

24 Q How is the price agreed to between --

25 A We -- a branded price?

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1 Q Yes.

2 A Again, comes from the subsidiaries. Now,  
3 you say is there a contract? We agree on certain  
4 advertising things that, you know, through the year.  
5 But there is no written contract, that says, for  
6 this time frame. But we do do some ad activity and  
7 things like that with them.

8 Q Okay. Ad activity being you would agree  
9 to have certain promotional areas, or something like  
10 that?

11 A Exactly.

12 Q What, can you give me an example off the  
13 top of your head?

14 A Yes. If we got a honey wheat promotion on  
15 honey wheat bread, we may go to them, it may cost  
16 us, you know, \$5,000 to put our ad in their weekly  
17 paper.

18 Q Their circular?

19 A Yes. They may put that in the store. So  
20 we do participate in some of those type of  
21 opportunities.

22 Q Is that like a sales give-away or  
23 something like, would it be a, is it just they're  
24 promoting the product, or is it they're promoting a  
25 special sale of a product?

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1           A     It can be any of that. Some, you know, a  
2     lot of times they will bring it to us, sometimes we  
3     can bring it to them. So it can go either way.

4           Q     And that is something you guys have agreed  
5     to, but not in sort of a formal contractual manner?

6           A     Exactly.

7           Q     Is there someone that calls on Bruno's  
8     with respect to the specialty products?

9           A     David Johnson does that.

10          Q     Is the arrangement with respect to the  
11     specialty products the same with the respect to the  
12     branded products in terms of the bottom up that you  
13     described?

14          A     Yes. Well, specially, on the specialty  
15     side Mark Courtney pretty much determines the  
16     pricing. They will share that information with  
17     David Johnson, for example, here, and David would  
18     actually make a sales call.

19          Q     With Mark?

20          A     From time-to-time we talked about him  
21     earlier, Executive VP on Flowers Specialty Group,  
22     from time-to-time somebody from the Specialty  
23     Division may make that call with David.

24                 MR. HISHTA: I'm not sure that this is  
25     clear on the record, but he's using the

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1 terminology, "call," and that does not  
2 necessarily mean there is a particular product  
3 in that account.

4 MR. GUGLIELMO: No, I think, I think the  
5 description that Mr. Roach provided originally  
6 is call on is sort of to solicit the business.

7 MR. HISHTA: Yes.

8 MR. GUGLIELMO: I think in a couple of  
9 instances you said, I think it was with respect  
10 to maybe Publix, you said this gentleman Mr.  
11 Williams has been calling on them, but they  
12 haven't been purchasing any specialty product.  
13 So I've been understanding it. If you want, we  
14 can make it clearer. When you are referring to  
15 "call on," you're saying they're sort of going  
16 out their trying to get the direct contact with  
17 them, trying to push the product whether  
18 successfully or not.

19 THE WITNESS: Right.

20 MR. GUGLIELMO: But, yes, we can make it  
21 more clear.

22 MR. HISHTA: That's fair. Just as long as  
23 y'all are of the same mind set on that  
24 terminology.

25 MR. GUGLIELMO: I have a general

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1 understanding of what the term "call on" means

2 too, so that's a --

3 Q (By Mr. Guglielmo) We're going to turn to  
4 Southern Family Markets.

5 A Yes.

6 Q With respect to Southern Family Markets,  
7 is there a particular person that deals with  
8 national account?

9 A Yes. David Johnson also has that account.

10 Q And does he have that account with respect  
11 to the fresh as well as the specialty products?

12 A Yes.

13 Q And what are his responsibilities? Are  
14 they the same as with respect to Bruno's?

15 A Yes.

16 Q And how is the price established with  
17 respect to the Southern Family Market's national  
18 accounts?

19 A The branded price is the same, it's bottom  
20 up. Each subsidiary determines their pricing.

21 Q Is there a private label?

22 A Yes.

23 Q How is that established?

24 A It's, again, we've had that business for a  
25 long while, so it pretty much acts similar to the

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1 others. As have commodity increases, we have been  
2 able to get the increases in that account.

3 (WHEREUPON, a brief recess was taken)

4 VIDEOGRAPHER: The time is approximately  
5 11:27. This is the beginning of Tape No. 2.  
6 We're back on the record.

7 Q (By Mr. Guglielmo) Mr. Roach, before the  
8 break we were going over some of the national  
9 accounts that have been identified. I think we left  
10 off with Southern Family Markets. I'm not sure if I  
11 asked this question, but if I have, I apologize. Is  
12 there, is there a private label that is purchased by  
13 the Southern Family Markets?

14 A Yes.

15 Q Can you describe for me the general  
16 arrangement for the private-label brand that is  
17 purchased by Southern Family Markets?

18 A Yes. The, as I stated earlier, the  
19 private-label brand for Southern Family we had,  
20 we've had that business a considerable amount of  
21 time. Now, they, about two years ago they did,  
22 re-bid the business. We kept the business at that  
23 time. We do have a contract that ends, we've got  
24 one more year on that contract. But we, over many  
25 years now we have retained that business.

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1 Q So there is an actual contract between  
2 Flowers Bakeries Group and Southern Family Markets?

3 A There is a contract between Flowers  
4 bakeries with each subsidiary signing as a -- the  
5 Bakeries Group acts as a liaison to the process.

6 Q Okay. But who is the signatory to the  
7 contract?

8 A The signatory would be the individual  
9 subsidiaries.

10 Q And they're signatories to the contact  
11 that, the direct contract with the Southern Family  
12 Markets?

13 A Ask that again.

14 Q Are they the signatories to the contract  
15 with Southern Family Markets?

16 A That's the way I understand it. I can't  
17 be positive on that.

18 Q Okay.

19 MR. HISHTA: You have a document request  
20 pending for any contracts with national  
21 accounts, which we responded that we will  
22 provide copies of any contracts with respect to  
23 any national accounts, and we are in the  
24 process of ensuring that we have all of the  
25 relevant documents, and we'll certainly produce

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1       it, so and, you know, Mr. Roach has testified  
2       that he has not -- have you seen that document  
3       recently?

4               THE WITNESS:   No.

5               MR. HISHTA:   So I think if we need to go  
6       back to this area, we'll certainly, you know,  
7       willing to do so once we have provided the  
8       contract and we can see exactly who the  
9       signatories are and who the parties to that  
10      contract are.

11              MR. GUGLIELMO:  Again, this is to the best  
12      of your knowledge.  I'm not asking you to  
13      speculate or to guess.

14              MR. HISHTA:  I just want to make it clear  
15      for the record, this is a 30(b)(6) deposition.  
16      We are agreeing to cooperate with you in  
17      producing the document, you know, the document,  
18      I don't think fall, necessarily falls within  
19      "representative documents," but we have now  
20      gotten into this particular area, and certainly  
21      if y'all feel you need additional testimony  
22      after reviewing the document, we will  
23      certainly, you know, make either Mr. Roach or  
24      someone available to answer any questions that  
25      you might have.

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1 MR. GUGLIELMO: Okay. Fair enough. Thank  
2 you.

3 Q (By Mr. Guglielmo) And does that contract,  
4 to the extent that you can recall, does that cover  
5 specialty products as well?

6 A No.

7 Q Are there, is there a contract with  
8 Southern Family Markets for the specialty products?

9 A Not that I'm aware of.

10 Q Are the -- do the Southern Family Markets  
11 purchase specialty products?

12 A They purchase very little. They may  
13 purchase a shipper, which is a pop-up type display.  
14 And they may have, they may do a truckload sale.  
15 But that's pretty much it.

16 Q Who is the -- is there a different person?  
17 I know, I think you testified before the break that  
18 David Johnson --

19 A Yes, it would be David.

20 Q David Johnson would call on the Southern  
21 Family Markets with respect to the specialty  
22 products?

23 A That's correct.

24 Q Turn to Target. Is there a person that is  
25 responsible for the national accounts with Target?

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1 A Yes. Charles Avera.

2 Q Avery?

3 A Avera, with an A.

4 Q Okay. And what is Mr. Avera's title or  
5 position?

6 A Vice President of National Accounts.

7 Q Vice President of Flowers Bakeries Group?

8 A He is on the national accounts team, which  
9 is part of the Bakeries Group.

10 Q What are Mr. Avera's duties and  
11 responsibilities?

12 A His duties, again, are to help build that  
13 relationship with that account, and to communicate  
14 the information to the account.

15 Q Is there someone, is there anyone in  
16 addition to Mr. Avera that is responsible for the  
17 Target national account?

18 A No.

19 Q And is there a contract with Target with  
20 respect to the Flowers --

21 A No --

22 Q I'm sorry.

23 A I'm sorry.

24 Q I'm sorry, let me finish the question. I  
25 apologize, I'm starting to -- is there a contract

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1 with Target with respect to the Flowers products?

2 A No.

3 Q And so how are the prices communicated to  
4 Target with respect to the Flowers products?

5 A Ask that again.

6 Q How are the prices of the Flowers products  
7 communicated to Target?

8 A Branded prices?

9 Q Yeah, let's stick with branded prices.

10 A Okay. The branded prices are communicated  
11 just like the rest we've discussed today. From  
12 bottom-up subsidiaries determine the pricing.  
13 Pricing is then sent to Charles, Charles submits  
14 that pricing to the buyer. And then once approved,  
15 that pricing comes back as approved, and they submit  
16 it or go with that pricing.

17 Q And is there any private-label product  
18 that is purchased by Target?

19 A There is.

20 Q How is that handled with respect to the  
21 pricing?

22 A The private-label pricing with Target is  
23 done state-by-state.

24 Q Branded?

25 A But we do have one price with Target.

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1 Q One price per state?

2 A We have one price that crosses all states.  
3 Even though they bid it state-by-state, we have one  
4 price.

5 Q Okay. And that's, the price is the, that  
6 is, the prices for the product in the areas in which  
7 Flowers manufactures it's product, in other words,  
8 it doesn't transcend any other areas outside of  
9 Flowers sort or distributor network?

10 MR. HISHTA: When you're talking about the  
11 Flowers distributor network, you're talking  
12 about a particular, subsidiaries that have  
13 distributors within a target where there are  
14 Target stores?

15 MR. GUGLIELMO: Correct. Yes. Do you  
16 understand that question?

17 THE WITNESS: Ask it one more time.

18 Q (By Mr. Guglielmo) Okay. You said there  
19 is a, there is one price, and then you said it's bid  
20 out state by state?

21 A Private label.

22 Q Private label, correct.

23 So that would be, the bidding state  
24 by state would be applicable to those areas where  
25 Flowers Bakeries sell their products?

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1 A That's correct. Each subsidiary.

2 Q Okay. In other words, it wouldn't be a  
3 nationwide bidding going on by Flowers?

4 A No.

5 Q Because Flowers doesn't sell bread  
6 nationwide?

7 A That's correct.

8 Q Is there a person that deals with the  
9 specialty products as it pertains to the Target  
10 national account?

11 A I don't know that answer.

12 Q Okay.

13 A I'm not aware of one.

14 Q Do you know if Target purchases specialty  
15 product, Flowers specialty product?

16 A Not that I'm aware of.

17 Q I'm going to turn to what I think may be a  
18 term that you may understand, Food Service Accounts,  
19 do you have an understanding of what that is?

20 A Yes.

21 Q Can you describe to me what you think Food  
22 Service Accounts to be?

23 A I understand Food Service Accounts to be,  
24 to include fast food accounts, such as the Burger  
25 King and/or a U.S. Food Service or Sysco-type

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1 account where the product goes through some frozen  
2 or warehouse-type distribution.

3 Q And are, is the term Food Service  
4 Accounts, would that be, would that include only  
5 national accounts?

6 A No.

7 Q Okay. So it could include local accounts  
8 as well?

9 A Yes.

10 Q But there are national accounts within the  
11 term, the Food Service Accounts as used by --

12 A Yes.

13 Q As understood by you?

14 A That's correct.

15 Q Okay. With respect to, turn to Sonic. Do  
16 you know if there is a particular person that is  
17 responsible for dealing with the Sonic national  
18 account?

19 A Yes. All of the national accounts are  
20 handled by one person for me, it would be Jeff  
21 Strain.

22 Q So I'm clear, all of the national accounts  
23 with respect to Food Service?

24 A All the -- well, as we go through them  
25 individually, the ones that actually fall under the

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1 national accounts team are managed by Jeff Strain.  
2 There are a couple in here that are managed by, or  
3 that have a Regional VP, maybe the guy that is  
4 predominantly involved with it.

5 Q Okay. What is Mr. Strain's title or  
6 position?

7 A He is Director of National Accounts Food  
8 Service. I'm not sure exactly, but it's in that  
9 arena.

10 Q Okay. Did he report, did Mr. Strain  
11 report to you when you were in the position of Vice  
12 President of National Accounts?

13 A Yes.

14 Q What is Mr. Strain's, to the extent you  
15 know, do you know what Mr. Strain's duties or  
16 responsibilities are as the Director of National  
17 Food Service accounts?

18 A His responsibilities are, he communicates  
19 pricing. He's the main contact to the account,  
20 which communicates back to the subsidiaries of  
21 Flowers Bakeries.

22 Q And does, would Mr. Strain be the  
23 individual responsible for calling on the Food  
24 Service accounts that are national accounts?

25 A Not all of them.

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1 Q Can you tell me which ones he would be  
2 responsible for?

3 A He has Sonic, Arby's, Burger King is Craig  
4 White, who is a Regional Vice President.

5 Q Regional Vice -- so let me interrupt you  
6 for a second. I apologize. Regional Vice President  
7 of?

8 A Of Flowers Bakeries.

9 Q Okay.

10 A Then Jeff has Hardee's, Sodexo,  
11 Chick-Fil-A. He does call on them, but we can get  
12 into it more later. But a lot of the individual  
13 subsidiaries also have a big play in that. He does  
14 call on Hooters. We have a Director of Sales in  
15 Augusta who calls on Zaxby's. But Jeff is also  
16 involved from a peripheral. And then Krystal is  
17 called on by Brad Alexander, who is also Regional  
18 Vice President.

19 Q Regional Vice President of?

20 A Flowers Bakeries.

21 Q Okay. And with respect to the, with  
22 respect to Sonic, what types of product are  
23 purchased by Sonic?

24 A Hamburger, hot dog buns.

25 Q Are those branded or private label, how

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1 would you describe them?

2 A They would be non-branded.

3 Q But you wouldn't consider them private  
4 label?

5 A No.

6 Q How would you describe these products that  
7 are purchased by Sonic?

8 A I would describe them as just non-branded  
9 bulk product.

10 Q Is there a contract between Sonic and  
11 Flowers with respect to the purchase of the bulk  
12 product?

13 A With Sonic, I'm not aware of a contract.

14 Q How is the, how is the, how is the  
15 purchase by Sonic of Flowers product sort of  
16 memorialized? Is it just an oral -- I'll take it a  
17 step back. How are prices agreed to between Sonic?

18 A We have one price with Sonic. And it's,  
19 and Jeff basically communicates that price. So we  
20 have one price across all subsidiaries.

21 Q Okay. And is the, is the price similar to  
22 the description that you provided earlier with  
23 respect to the private-label product, or is it  
24 something different?

25 A It's something different.

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1 Q Okay. Can you describe what, what that  
2 is?

3 A It's --

4 MR. HISHTA: Describe how it's done.

5 THE WITNESS: How the price is --

6 Q (By Mr. Guglielmo) Let me help you out.  
7 I'm not going -- is there a zone structure, or is  
8 it --

9 A No, one price.

10 Q Okay.

11 A One price.

12 Q It's one price for the products that are  
13 purchased by Sonic throughout the territories that  
14 Flowers distributors serve?

15 A That's correct.

16 Q Okay. And other than Jeff Strain, is  
17 there anyone else that is responsible for the Sonic  
18 national account?

19 A I know Jim Frier who is on the specialty  
20 side, specialty division has also in the past been  
21 involved with Sonic, but I don't know if he's  
22 currently.

23 Q What was, what is, what -- when Mr. Frier  
24 was involved in the Sonic account, what was his  
25 title or position?

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1           A     I believe he's a Vice President of Food  
2     Service for Specialty Division.

3           Q     Just want to take a step back. The Food  
4     Service Specialty Division, did they report, did  
5     those individuals report to you when you were the  
6     Vice President of National Accounts?

7           A     Just Jeff.

8           Q     Just Jeff. Okay. And how is the -- is  
9     there a particular, how are the -- the -- I'm sorry,  
10    strike that.

11                         So with respect, so Jeff would report  
12    to you while you were the Vice President of National  
13    Accounts pertaining to the Food Service accounts  
14    that he serviced that were also national accounts?

15          A     Yes, that's correct.

16          Q     Okay. Anyone else other than Mr. Strain  
17    or Mr. Frier?

18          A     Frier.

19          Q     Frier involved in the Food Service  
20    national accounts?

21          A     Food Service national accounts. The  
22    Specialty Division is very involved with Food  
23    Service.

24          Q     Who from the Specialty Division was  
25    involved in the national accounts, Food Service

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1 national accounts?

2 A I know Bob Heizel is in charge of the  
3 Specialty Division, Food Service business.

4 Q And what is Mr. Heizel's title or  
5 position?

6 A I'm not sure.

7 Q Do you know what his general duties and  
8 responsibilities are?

9 A Yes, I mean, he's in charge of all food  
10 service sales for the Specialty Division.

11 Q And is the, are the sales of specialty  
12 products, is the -- strike that.

13 With respect to the specialty  
14 business pertaining to Sonic, is the, are the prices  
15 communicated in the same way that they're  
16 communicated with respect to the bulk product?

17 MR. HISHTA: Are you going back now to the  
18 bakery side of the business?

19 MR. GUGLIELMO: Yes, I want to understand  
20 whether it's the same. Whether the --

21 THE WITNESS: I'm not aware, I'm not aware  
22 if Specialty has any business with Sonic.

23 Q (By Mr. Guglielmo) Okay. But Mr. Heizel  
24 will call on Sonic with respect to --

25 A No.

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1 Q He would not?

2 A No. You'd asked about Food Service. On  
3 the Specialty Division side he's responsible for  
4 food service.

5 Q And is he also responsible for specialty  
6 products that are sold to any national account  
7 that's a Food Service account?

8 A No.

9 Q Is there a particular person that would be  
10 responsible for that?

11 A Each, well, each subsidiary is responsible  
12 for their own, but -- I'm not following your  
13 question.

14 Q I think what I was trying to get at is,  
15 with respect to, you give the exam Mr. Strain was  
16 responsible for calling on Sonic as it pertained to  
17 the bulk product. Is he also responsible for  
18 calling on Sonic with respect to any potential  
19 specialty product that may be purchased by Sonic?

20 A Well, there is none, so --

21 Q Okay. Would their be any specialty  
22 products that would be purchased by any of the Food  
23 Service accounts?

24 A Yes.

25 Q Who would be responsible for calling on

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1 those specialty, I'm sorry, those Food Service  
2 accounts that are also national accounts?

3 A It can be different in each account.

4 Q Okay. We'll go through them one-by-one.

5 With respect to Arby's, I think you  
6 said Mr. Strain is also responsible for dealing with  
7 the national account; is that correct?

8 A Yes.

9 Q Is he -- is there any specialty product  
10 that is purchased by Arby's?

11 A Yes, there is.

12 Q Who is responsible for dealing with Arby's  
13 on the purchasing of specialty product?

14 A Actually I'm not sure. I don't know on  
15 the specialty side of the business.

16 Q Okay. Do you know who, do you know anyone  
17 who may know?

18 A Jim Frier or Bob Heizel would be able to  
19 answer that.

20 MR. HISHTA: Just for the record, when  
21 we're talking about "this" side of the  
22 business, we're talking about frozen products.  
23 We're not talking about --

24 MR. GUGLIELMO: Snack cakes.

25 MR. HISHTA: -- fresh, we're not talking

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1 about fresh buns going into an Arby's that, the  
2 DSD network. We're talking about an alternate  
3 distribution network where goods would be sold,  
4 you know, through a warehouse, or a buyer, you  
5 know, none DSD frozen business, correct?

6 THE WITNESS: Right.

7 MR. GUGLIELMO: Let me make that clear,  
8 then I'll ask a couple of questions to clarify.  
9 Again, maybe I was just under --

10 Q (By Mr. Guglielmo) Are any of the  
11 specialty products sold to food, national accounts  
12 that are Food Service accounts, that are sold  
13 through the independent distributor network?

14 A Are there any specialty products produced  
15 in specialty plants? Yes.

16 Q Okay.

17 MR. HISHTA: He didn't understand the  
18 question.

19 MR. GUGLIELMO: Let me ask it.

20 Q (By Mr. Guglielmo) Is it fair to say that  
21 there are specialty products that are sold to the  
22 national food service accounts that are delivered  
23 using the independent distributor network?

24 A I don't know what you mean by, "specialty  
25 products." There are products produced by the

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1 Specialty Division that a subsidiary will purchase  
2 from them, and they sell that product to the  
3 distributor to sell to the account.

4 MR. HISHTA: To a food service account?

5 THE WITNESS: To a food service account,  
6 yes.

7 MR. GUGLIELMO: Okay.

8 MR. HISHTA: Just go through the list.

9 Q (By Mr. Guglielmo) Can you off of the top  
10 of your head give me an example of a couple of types  
11 of products that would fall into that category?

12 A Let me see, a sub roll, for example, we  
13 may purchase a sub roll from a Specialty Division  
14 plant, deliver that product to a food service  
15 account, or deliver that product to the bakery. The  
16 bakery turns around and sells it to the distributor,  
17 the distributor sells it to the Food Service  
18 account.

19 Q Okay. And I think the first question that  
20 started this whole area and line of questioning, is  
21 there a particular person that would be responsible  
22 for dealing with the specialty products that are  
23 purchased by these Food Service accounts that are  
24 sold by the, sold by the individual, independent  
25 distributor program?

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1 A Is there an individual person?

2 Q Is there a person that is responsible for  
3 dealing with these Food Service accounts on the  
4 specialty products that are actually distributed  
5 through the independent distributor network?

6 A I mean, Jeff is the guy that would  
7 communicate to the individual subsidiaries. So,  
8 that communication would be Jeff.

9 Q Okay. With respect to, I'll turn to  
10 Burger King now.

11 A Yes.

12 Q You indicated that Craig White is  
13 responsible for calling on Burger King?

14 A Correct.

15 Q Can you describe for me generally what Mr.  
16 White's duties and responsibilities are?

17 A He's a Regional Vice President, and he  
18 also is responsible for, you know, the contact at  
19 Burger King.

20 Q Is there a contract between Burger King  
21 and Flowers for the purchase of product?

22 A Yes.

23 Q Okay. Can you describe for me generally  
24 what the pricing arrangement is with respect to the  
25 contract?

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1           A     I know that Flowers Bakeries, which Craig  
2     White works, he's part of the Bakeries Group. He is  
3     the, he acts as the, as a, he's the lead guy for,  
4     you know, to call on Burger King. The pricing is,  
5     he basically determines the pricing that goes  
6     company-wide.

7           Q     So is it one price similar to the Sonic  
8     arrangement?

9           A     I wouldn't say any of these are similar.

10          Q     Okay.

11          A     But in retrospect, yes, it is one price,  
12     and it is determined by commodities and increases  
13     and decreases in commodities as well.

14          Q     Okay. Does Burger King purchase any  
15     specialty product from Flowers?

16          A     Not that I'm aware of.

17          Q     Turn to Hardee's. You indicated Jeff  
18     Strain is in charge of Hardee's?

19          A     Yes.

20          Q     Are his duties generally the same with  
21     respect to Hardee's as they are with Sonic and  
22     Arby's?

23          A     Yes, his duties are the same.

24          Q     Are there any additional duties with  
25     respect to Hardee's?

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1 A No.

2 Q And does Hardee's have a contract with  
3 Flowers for the purchase of product?

4 A Not that I'm aware of.

5 Q Can you describe for me generally the  
6 pricing arrangement for Hardee's purchasing Flowers  
7 product?

8 A Yes. Jeff, again, handles the pricing  
9 there. The, we have four plants that produce  
10 product for Hardee's. So we actually have four  
11 different prices set up depending on which facility  
12 that product comes from.

13 Q Similar to a zone set up?

14 A Yes.

15 Q Does Hardee's purchase any specialty  
16 product?

17 A Not that I'm aware of. Just to make  
18 something clear, some specialty product could come  
19 through a Sysco or a U.S. Food Service. As, you  
20 know, Flowers may sell product to a U.S. Food  
21 Service that actually Arby's or somebody like that  
22 could purchase from them and not from Flowers. But  
23 it would be Flowers product, you know.

24 Q Could be Flowers specialty products, in  
25 other words?

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1 A Yeah.

2 Q But the fresh product would come from --

3 A From the distributors.

4 Q Okay. Turn to Sodexho. Is Mr. Strain  
5 responsible for Sodexho?

6 A Yes.

7 Q Can you generally describe his  
8 responsibilities with respect to the Sodexho  
9 national account?

10 A Yes. Sodexho is, his responsibilities are  
11 similar in all of these accounts in communicating  
12 pricing and with the plants.

13 Q And do you, are you aware of the pricing  
14 arrangement with respect to the Sodexho national  
15 account?

16 A Sodexho is state-by-state pricing.

17 Q Mr. Strain communicates the pricing with  
18 respect to the Sodexho national account?

19 A That's correct.

20 Q And any specialty product purchased by  
21 Sodexho?

22 A I don't know.

23 Q The Chick-Fil-A, I think you indicated  
24 that there is a little bit different arrangement  
25 there, although Mr. Strain is involved; is that

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1 correct?

2 A Yes.

3 Q Can you describe for me what the  
4 arrangement is with respect to Chick-Fil-A national  
5 account?

6 A Yes. There is a, there is one golden  
7 wheat bun that is basically one price across all  
8 Chick-Fil-A's. The Chick-Fil-A, as you probably  
9 know, are owner-operators. So the pricing could be  
10 set up by bakery or by each individual unit, if  
11 needed to be competitive.

12 Q So, just to be clear, the pricing could be  
13 set up by the Flowers bakery or by the individual  
14 Chick-Fil-A?

15 A Both. Each Chick-Fil-A can negotiate a  
16 different price, if they wanted.

17 Q And they negotiate that with the bakery?

18 A They would negotiate that with a person  
19 at, with a sales person at each subsidiary.  
20 Typically a --

21 Q At the bakery?

22 A The VP at the bakery level, yes.

23 Q So Chick-Fil-A purchases one, they  
24 purchased one Flowers product?

25 A No, there are several others. The others

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1 are, again, those are the ones that the prices can  
2 differ in. Chick-Fil-A has different buying groups  
3 that are set up by these owner-operators, and then  
4 those buying groups can try to negotiate different  
5 pricing. So that's one of the differences in  
6 Chick-Fil-A.

7 Q Does Mr. Strain deal with those buyer  
8 groups?

9 A No. That would be done at each  
10 subsidiary.

11 Q I would assume there is, correct me, there  
12 is no contract between Chick-Fil-A and Flowers for  
13 the purchase of any product?

14 A No. There is a specialty, a bun that  
15 comes through the Specialty Division as well.

16 Q Is that specialty bun distributed by the  
17 independent distributors?

18 A No. And Jeff Strain, I mean, Jim Frier  
19 would actually make that sales call --

20 Q Okay.

21 A -- to Chick-Fil-A.

22 Q Turn to Hooters. Mr. Strain is  
23 responsible for the Hooters national account?

24 A Yes.

25 Q Are his duties the same, generally the

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1 same as to the other Food Service accounts?

2 A Yes.

3 Q You understand -- does Hooters have a  
4 contract with Flowers Foods for the purchase of  
5 product?

6 A Not that I'm aware of.

7 Q Do you understand the pricing arrangement  
8 that is communicated to Hooters?

9 A Yes. The way I understand it is we have,  
10 we have one price in Georgia, which is where the  
11 majority of their corporate or company-owned stores  
12 are. And outside of that, all the pricing is done  
13 by each subsidiary, each plant.

14 Q Just so I'm clear. The pricing, you said  
15 the pricing is done with each plant, you mean each  
16 Flowers bakery?

17 A Yes.

18 Q Each Flowers bakery then would negotiate  
19 with each individual Hooters?

20 A Yes.

21 Q Do you know who's responsible for those  
22 negotiations, would that be a particular person in  
23 each bakery?

24 A Yes. VP. Typically a VP. Could be a  
25 Director of Sales.

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1 Q But with respect to the company-owned  
2 Hooters in Georgia, that would fall on the  
3 responsibilities of Jeff Strain?

4 A Jeff strain, that's correct.

5 Q Does Hooters purchase any specialty  
6 product that is delivered by the independent  
7 distributors?

8 A I'm not sure of that.

9 Q Turn to the Zaxby's. Do you know who is  
10 responsible for calling on the Zaxby's national  
11 account?

12 A Yes, that is Steve Matthews. He's a  
13 Director of Sales.

14 Q And is he a Director at Flowers Bakery  
15 Group?

16 A He is a Director of Flowers Baking Company  
17 of Villa Rica and --

18 Q What are his duties and responsibilities?

19 A His day-to-day duties are responsibility  
20 for several warehouses. Zaxby's office is in that  
21 area where he's responsible for, so we have him call  
22 on that account.

23 Q Does he call on that account on behalf of  
24 the Flowers Villa Rica, or other Flowers as well?

25 A Other Flowers as well.

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1 Q Does Zaxby's have a contract with Flowers  
2 for the purchase of product?

3 A They do not.

4 Q How are the prices communicated to  
5 Zaxby's?

6 A We have one price with Zaxby's, and prices  
7 are communicated through Steve to the different  
8 subsidiaries.

9 Q Anyone else other than Mr. Matthews  
10 responsible for dealing with the Zaxby's national  
11 account?

12 A I said earlier Jeff Strain has a little  
13 involvement there.

14 Q I think you said he may call on them  
15 sometimes as well?

16 A Yes.

17 Q Anyone else?

18 A No.

19 Q Turn to Krystal. I think you testified  
20 Brad Alexander is responsible for the Krystal  
21 national account?

22 A Yes.

23 Q Do you know what Mr. Alexander's title or  
24 position is?

25 A He's a Regional Vice President.

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1 Q Flowers Bakeries?

2 A Flowers Bakeries Group.

3 Q Do you know what his duties and  
4 responsibilities are as to the Krystal national  
5 account?

6 A There is actually, there is another guy,  
7 Ray McDaniel, who has been also calling on Krystal  
8 with him. I'm not sure which is, which is the lead.  
9 But they both have been calling on Krystal. Ray has  
10 been the President of our Bailey Street Bakery,  
11 which produces the Krystal bun. And recently has  
12 changed jobs, but the two of them have been handling  
13 that account.

14 Q What is the Bailey Street Bakery?

15 A It's a bakery in downtown Atlanta.

16 Q And the Bailey Street Bakery produces, are  
17 they the exclusive producer of the buns for Krystal?

18 A No. We have several other bakeries to  
19 produce it.

20 Q But Mr. McDaniel and Jeff Strain are  
21 responsible for --

22 A Not Jeff.

23 Q Oh, not Jeff?

24 A Jeff doesn't do anything with Krystal.

25 Q I'm sorry. Mr. McDaniel is responsible

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1 for communicating with respect to Krystal on the  
2 national account?

3 A Yes. He and/or Brad Alexander.

4 Q Is there a contract between Krystal and  
5 Flowers Foods for the purchase of any product?

6 A Yes.

7 Q Do you know what the, how the pricing is  
8 communicated to Krystal with respect to the purchase  
9 of Flowers product?

10 A I just know that Brad and Ray are the  
11 communication link that, to go make that sales call  
12 with Krystal.

13 Q Okay. Does the contract contain one price  
14 for the purchase of Flowers product?

15 A Yes. One price per item.

16 Q I think you may have said this, the, Mr.  
17 McDaniel -- I'm sorry. The Bailey Street Bakery  
18 isn't the only bakery that produces product for  
19 Krystal?

20 A Correct.

21 Q But Mr. McDaniel is one of the two  
22 individuals who call on Krystal's as it pertains to  
23 that national account?

24 A Correct.

25 Q Do you have an understanding why Mr.

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1 McDaniel is part of the process to call on Krystal?

2 A Because he's in Atlanta, Krystal's office  
3 is in Chattanooga, and he is a major manufacturer of  
4 their product, so they will come, Krystal will come  
5 in and audit that plant. So he had some significant  
6 involvement with Krystal.

7 MR. GUGLIELMO: Okay. Does it make sense  
8 to mark the list that we've been using as an  
9 exhibit, just for the purposes of --

10 MR. HISHTA: Sure. Mark it. At least as  
11 far as our understanding today, you know, one  
12 or more of the plaintiffs service these  
13 national accounts.

14 MR. GUGLIELMO: Yes, and I'm not, it's  
15 not, we're not, you know, making any  
16 representations, or you aren't, as to the  
17 authentication of the document, or whatever.  
18 It's just, for purposes of the discussion we  
19 have been having, I think it makes sense,  
20 because this will help others who may read this  
21 transcript sometime in the future.

22 But, yeah, if we can just have the, this,  
23 we have a document that lists the accounts that  
24 we have been, Mr. Roach has been providing  
25 testimony as to that was provided by counsel

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1 for Flowers. I just want to mark that as  
2 Flowers Foods 8. Flowers Foods 8.

3 (Marked for identification  
4 purposes, Exhibit No. 8.)

5 MR. HISHTA: Now, for the record I'll ask  
6 for the other contract that we discussed, get  
7 copies of the contracts for Sodexho, and I  
8 believe there's one other one.

9 MR. GUGLIELMO: Zaxby's.

10 MR. DAVIS: Burger King.

11 MR. HISHTA: Burger King.

12 THE WITNESS: Burger King.

13 MR. HISHTA: Actually, as I understand it,  
14 the contract with Burger King, it's not  
15 actually with Burger King. It is with a group  
16 that acts on behalf of Burger King, which is  
17 RSI.

18 MR. GUGLIELMO: Okay.

19 Q (By Mr. Guglielmo) Mr. Roach, I want to  
20 turn you back to this document that sort of has been  
21 assisting my questions and also your answers. As  
22 you take a look at this list, are there any other  
23 national accounts that may have been serviced by the  
24 plaintiffs in this case that are no longer national  
25 accounts with Flowers?

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1 A No.

2 Q Okay. I think with respect to Bruno's,  
3 you indicated that Flowers engages in certain  
4 advertising, they put their ads into the circular.  
5 I think that was part of the testimony you provided  
6 earlier?

7 A Right.

8 Q Are there any other national accounts  
9 where Flowers also engages in certain advertising  
10 similar to that that you described with respect to  
11 Bruno's?

12 A Yes.

13 Q Okay. What other national accounts?

14 A Publix would be one, Bruno's, Southern  
15 Family Markets. That would be all on this list.

16 Q With respect to, turn to Publix for a  
17 minute.

18 A Winn-Dixie is on.

19 Q Okay. Turn to Publix. Do you have a  
20 general understanding of the types of advertising  
21 that would appear in regard to Publix's national  
22 account?

23 A I think so.

24 Q Can you describe for me generally what  
25 type of advertising?

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1           A     For example, the Publix will have a  
2     holiday ad book that goes out to so many thousand  
3     consumers. We come out with a new product, we may  
4     place that product in that ad, in that ad magazine,  
5     or ad book. And that would be an example for  
6     Publix.

7           Q     Would you also have certain things like  
8     promotional sales with respect to --

9           A     Yes.

10          Q     -- Flowers products?

11          A     Right.

12          Q     How about Winn-Dixie, the same type of  
13     advertising?

14          A     Yes. Similar. Winn-Dixie would be more  
15     along the lines of the weekly-type ad, the ad that  
16     goes out to homes in the Sunday paper and placed up  
17     in the front of the store when the customer walks  
18     in.

19          Q     With respect to the Southern Family  
20     Markets?

21          A     Similar.

22          Q     Similar type of advertising. Could that  
23     also include promotional advertising, or advertising  
24     with respect to sales of particular Flowers  
25     products?

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1           A     Yes, sometimes. As in conjunction with,  
2 or at the same time as, yes.

3           Q     And would the, I think for the most part  
4 Mr. Strain -- no, I'm sorry. Strike that.

5                     Would the individual responsible for  
6 calling on those accounts also be responsible for  
7 dealing with the advertising related to those  
8 national accounts?

9           A     Yes.

10          Q     And with respect to these accounts that  
11 are listed, do you have an understanding of how  
12 these accounts would pay for the product that is  
13 sold within their stores?

14          A     Somewhat.

15          Q     Okay. For example?

16                     MR. HISHTA: I think we're kind of  
17 crossing into Karyl's territory as far as, you  
18 know, the topic areas described in the  
19 accounting and payment methodology.

20                     MR. GUGLIELMO: Okay. I'll ask one  
21 question to make sure that that's --

22          Q     (By Mr. Guglielmo) With respect to the  
23 Wal-Mart account, for example, do you, would you be  
24 the person knowledgeable to provide testimony as to  
25 how Wal-Mart will, whether or not Wal-Mart remits

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1 the funds to Flowers and then Flowers would then  
2 ultimately remit payment to the distributors, or  
3 would that be someone else?

4 A Karyl would probably be better to answer  
5 that.

6 Q Okay. Mr. Roach, do you understand the  
7 term, "authorized accounts"?

8 A Authorized accounts, yes.

9 Q Do you know what that means with respect  
10 to -- do you have -- what does that mean to you?

11 A Authorized accounts, what it means to me  
12 is accounts within a distributor's territory that  
13 that distributor would be authorized to sell  
14 products.

15 Q Okay. So have you heard of the term,  
16 "unauthorized accounts"?

17 A Unauthorized?

18 Q If it's not a term that you are familiar  
19 with, you can just say so.

20 A I've heard the term, I'm just not sure  
21 where that's going.

22 Q No, I just -- would unauthorized accounts  
23 be the opposite of authorized accounts, Is that sort  
24 of two terms --

25 A Yes.

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1 Q Okay. That is what I was trying to  
2 understand. And just so I'm clear, Kevin, again, I  
3 apologize, the testimony regarding the Pay-By-Scan  
4 as it pertains to the national accounts would be Ms.  
5 Lauder as well?

6 MR. HISHTA: Yes.

7 Q (By Mr. Guglielmo) Okay. I want to go  
8 back for a minute. Mr. Roach, can you tell me what  
9 period of time you were the Vice President of  
10 National Accounts?

11 A Yes. Let's see, for the past four years  
12 leading up to mid December.

13 Q Okay. So mid December 2007, going back to  
14 about mid December 2003?

15 A I don't know the exact date, approximately  
16 four years.

17 Q Prior to that time what was your position  
18 or title?

19 A Prior to that time I was the President of  
20 Flowers Baking Company of Nashville.

21 Q For what period of time did you hold that  
22 position?

23 A For approximately two years.

24 Q Prior to that time what title or position  
25 did you hold?

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1           A     Prior to that I was Vice President of  
2     Sales at Flowers Baking Company of Villa Rica.

3           Q     And prior to this, prior to your, prior to  
4     you holding the position of Vice President of  
5     Sales --

6           A     I was a Regional Sales Director.

7           Q     For a particular -- what region would that  
8     be?

9           A     It would be -- regions have changed since  
10    then. At that time I was working for Gene Lord, who  
11    was a Regional Vice President at the time.

12          Q     Do you know what region that was?

13          A     They called it the Lord region.

14          Q     Is there a particular geographic area to  
15    that region?

16          A     Yes. It was more south, the southeast.  
17    Several states, Georgia, Alabama. And that region  
18    actually changed some during that tenure too. So it  
19    is a moving target.

20          Q     And then prior to you holding that  
21    position as Regional Director, did you have any  
22    positions or titles with Flowers?

23          A     Yes, I was a Director of Sales for Flowers  
24    Baking Company of Villa Rica.

25          Q     Prior to --

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1           A     Prior to that I was a Sales Manager for  
2     Flowers Baking Company of Villa Rica.

3           Q     How long did you hold that position?

4           A     Sales Manager, I don't remember, quite  
5     honestly.

6           Q     Okay.

7           A     A year, two years.

8           Q     And prior to that did you hold any  
9     position or title with Flowers?

10          A     I ran a route for approximately a year and  
11     a half.

12          Q     You were a route distributor?

13          A     We were company routes at the time.

14          Q     Do you remember approximately what time  
15     period you ran a route?

16          A     Started in 1992, May of '92.

17          Q     When did you cease running a route?

18          A     I don't know, approximately a year and a  
19     half later.

20          Q     On or about '93 or '94?

21          A     Yes.

22          Q     Where did you run that route?

23          A     In, well, I ran a route every day. It was  
24     different routes, for the most part. I ran  
25     Cobblestone Mill route, but all of it was in the

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1 Marietta, Georgia, and out of the Marietta  
2 warehouse.

3 Q What Flowers Food Bakery was that, do you  
4 know?

5 A When I started, it was Atlanta Baking  
6 Company. And it later became Flowers Baking Company  
7 of Villa Rica.

8 Q Prior to running the route did you hold  
9 any other titles or positions, or were you employed  
10 by Flowers?

11 A No. I must, when I say I ran a route, I  
12 was actually hired as an extra man which runs  
13 routes.

14 Q That was your title or position?

15 A I guess. I don't know if it had a title.

16 MR. GUGLIELMO: Go off the record.

17 VIDEOGRAPHER: The time is approximately  
18 12:19 p.m. We are now off the record.

19 (WHEREUPON, a brief recess was  
20 taken)

21 VIDEOGRAPHER: The time is approximately  
22 12:41 p.m. We are back on the record.

23 MR. GUGLIELMO: Kevin, I think we're going  
24 to reserve any time for rebuttal, but we're  
25 basically done.

D. ROACH

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1 EXAMINATION

2 BY-MR.HISHTA:

3

4 Q Mr. Roach, towards the end of Mr.

5 Guglielmo's questions, he asked you a few questions

6 concerning authorized accounts and unauthorized

7 accounts. I want to go back to that just to make

8 sure it's, we have that testimony clear on the

9 record. In the context of the Flowers

10 distributorship program, what is your understanding

11 of an authorized account?

12 A Okay. In context of the distributorship

13 program, an authorized account will be an account

14 where the billing and the payment is actually done

15 to the subsidiary that that distributorship is

16 connected to. On the other side, an unauthorized

17 account would be an account that that billing and

18 payment is not being done through the bakery, but

19 that distributor can still work any account that he

20 wants to through, by way of cash transaction. So in

21 no way are we limiting him as to what he can service

22 within his territory. He can service anything. But

23 that unauthorized account is simply that the billing

24 and the payments and all did not come through that

25 subsidiary.

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1 MR. HISHTA: I have no further questions.

2 MR. GUGLIELMO: Okay. One quick

3 clarification.

4 FURTHER EXAMINATION

5 BY-MR.GUGLIELMO:

6 Q Are you the person that provides, that  
7 would provide testimony as to how the authorized  
8 accounts would flow from the national account to the  
9 distributor, or is that Ms. Lauder?

10 MR. HISHTA: That would be Ms. Lauder.

11 MR. GUGLIELMO: Okay. With that, nothing  
12 further.

13 VIDEOGRAPHER: This concludes the  
14 videotape deposition --

15 MR. HISHTA: Mr. Roach will read his  
16 deposition transcript and sign as will the  
17 other witnesses, Ms. Lauder, and if we need any  
18 additional witnesses. Thank you.

19 VIDEOGRAPHER: This concludes the  
20 videotape deposition of Mr. David Roach. The  
21 date is January 30th, 2008. The time is  
22 approximately 12:44 p.m. We are now off the  
23 record.

24 (Whereupon, deposition concluded at 12:44 p.m.)

25

D. ROACH

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## DESCRIPTION OF EXHIBITS

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EXHIBIT

IDENTIFICATION

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Account List

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(Original exhibits attached to the  
Original transcript.)

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VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

D. ROACH

Page 96

1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3 I hereby certify that the foregoing  
4 transcript was reported, as stated in the  
5 caption, and the questions and answers  
6 thereto were reduced to typewriting under my  
7 direction; that the foregoing pages represent  
8 a true, complete, and correct transcript of  
9 the evidence given upon said hearing, and I  
10 further certify that I am not of kin or  
11 counsel to the parties in the case; am not  
12 in the employ of counsel for any of said  
13 parties; nor am I in any way interested in  
14 the result of said case.

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516-608-2400

D. ROACH

Page 97

1           Disclosure Pursuant to Article  
2   8(B) of the Rules and Regulations of the  
3   Board of Court Reporting of the Judicial  
4   Council of Georgia, I make the following  
5   disclosure:

6           I am a Georgia Certified Court  
7   Reporter, here as a representative of  
8   Brown & Gallo, L.L.C., to report the  
9   foregoing matter. Brown & Gallo, L.L.C.,  
10   is not taking this deposition under any  
11   contract that is prohibited by O.C.G.A.  
12   5-14-37 (a) and (b).

13           Brown & Gallo, L.L.C., will be  
14   charging its usual and customary rates  
15   for this transcript.

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THOMAS R. CAREY, CCR-B-1715

D. ROACH

Page 98

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CAPTION

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The Deposition of David M. Roach,  
taken in the matter, on the date, and at the time and  
place set out on the title page hereof.

It was requested that the deposition be taken  
by the reporter and that same be reduced to  
typewritten form.

It was agreed by and between counsel and the  
parties that the Deponent will read and sign the  
transcript of said deposition.

D. ROACH

100

## DEPOSITION ERRATA SHEET

RE: Brown & Gallo, L.L.C.

File No. 24079

Case Caption: CHARLES MORROW, et al,

vs. FLOWERS FOODS, INC., et al.

Deponent: David M. Roach

Deposition Date: January 30, 2008

To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me.

I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

Page No. 16 Line No. 11 Change to: typically house a Sales Manager and an CM (Operations Manager). And

Reason for change: Correct typographical error and clarification.

Page No. 17 Line No. 25 Change to: Flowers Bakeries, that team is,

Reason for change: Clarification of testimony.

Page No. 23 Line No. 11 Change to: The zone pricing will be closely aligned with market pricing, to

Reason for change: Clarification of testimony.

VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

Deposition of David M. Roach

Page No. 27 Line No. 8 Change to: And Bobby calls, he actually  
is the sales

Reason for change: Typographical error.

Page No. 29 Line No. 2 Change to: He'll give us the business,  
but he can take it

Reason for change: Clarification of testimony.

Page No. 32 Line No. 23 Change to: get it approved by Kevin  
Sullivan, who is the, one

Reason for change: Typographical error.

Page No. 34 Line No. 13 Change to: That's correct, but Opelika  
establishes the branded pricing, not the producing bakery.

Reason for change: Clarification and to be consistent with prior  
testimony.

Page No. 34 Line No. 18 Change to: the loaf breads. We will  
sell it to Opelika.

Reason for change: Typographical error.

Page No. 43 Line No. 17 Change to: That's correct. Opelika  
would decide market pricing.

Reason for change: Clarification of testimony.

SIGNATURE: David M. Roach

DATE: 3-10-08

David M. Roach

1 SUPPLEMENTAL ERRATA SHEET of David M. Roach

2

3 Page No. 54 Line No. 16-17 Change to: Yes.

4 Reason for change: Following deposition confirmed bakeries  
5 are signatories.

6 Page No. 64 Line No. 13 Change to: Yes, Sonic and various  
7 Flowers' subsidiaries.

8 Reason for change: Following deposition discovered contract  
9 in existence.

10 Page 68 Line 15 Change to: with respect to, you give the  
11 example Mr. Strain was

12 Reason for change: Typographical error.

13 Page No. 77 Line No. 14 Change to: There is a Vendor  
14 Agreement. There is a specialty, a bun that

15 Reason for change: Following deposition discovered Vendor  
16 Agreement in place between Chick-Fil-A, Inc. and Flowers  
17 Foods, Inc. and its affiliated companies.

18 Page No. 85 Line No. 18 Change to: Winn- Dixie is one.

19 Reason for change: Typographical error.

20

21 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

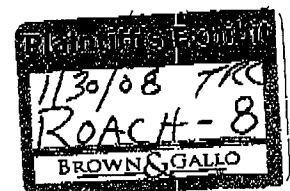
22

23 Reason for change: \_\_\_\_\_

24 SIGNATURE: David M. Roach DATE: 3-10-08

25 David M. Roach

1. Wal-Mart
2. Dollar General
3. Family Dollar
4. Fred's
5. Publix
6. Winn Dixie
7. Bruno's
8. Southern Family Markets
9. Target
10. Foodservice Accounts
  - Sonic
  - Arby's
  - Burger King
  - Hardee's
  - Sodexho
  - Chick-Fil-A
  - Hooters
  - Zaxby's
  - Krystal



## EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

|                                         |   |                   |
|-----------------------------------------|---|-------------------|
| CHARLES MORROW, MICHAEL                 | ) |                   |
| OVERTON, JAMES MARTY SMITH,             | ) |                   |
| DWAYNE CLEVELAND, MICHAEL SMITH,        | ) |                   |
| MARK MURPHY, DOUG BRANCH, LEW           | ) |                   |
| BAXTER, RICKY SMALL, MELVIN SNOW,       | ) |                   |
| GREG PATISAUL and GARY CHAMBLISS,       | ) |                   |
| Individually and on behalf of similarly | ) |                   |
| situated employees,                     | ) |                   |
|                                         | ) |                   |
| Plaintiffs,                             | ) | CIVIL ACTION NO.: |
|                                         | ) | 3:07-CV-617-MHT   |
| v.                                      | ) |                   |
|                                         | ) |                   |
| FLOWERS FOODS, INC., FLOWERS            | ) |                   |
| BAKING CO., OF OPELIKA, LLC, and        | ) |                   |
| FLOWERS BAKING CO. OF                   | ) |                   |
| THOMASVILLE, LLC,                       | ) |                   |
|                                         | ) |                   |
| Defendants.                             | ) |                   |

**PLAINTIFF MELVIN SNOW'S VERIFIED RESPONSES TO  
DEFENDANTS' FIRST INTERROGATORIES**

COMES NOW the Plaintiff, Melvin Snow, by and through his undersigned counsel, and hereby submits his objections and responses to Defendants' First Interrogatories to Plaintiff, as follows:

**PRELIMINARY STATEMENT**

Plaintiff reserves the right to modify, amend, or supplement these objections and responses at a later date. Plaintiff's responses are made without in any way waiving, but, on the contrary, expressly reserving: (1) the right to question or object to the authenticity, foundation, relevancy, materiality, privilege and admissibility of the information produced in response to the Interrogatories in any subsequent proceeding in, or the trial of, this action; (2) the right to object to the introduction of these responses and objections

into evidence in this action; and (3) the right to object on any ground at any time to other discovery involving the subject matter of the Interrogatories, or Plaintiff's responses and objections to the Interrogatories or the information produced in response to the Interrogatories.

Plaintiff remains available to meet and confer about the Interrogatories and their responses and objections thereto.

### **GENERAL OBJECTIONS**

1. Plaintiff objects to each and every Interrogatory to the extent the request seeks information and/or the production of documents, which are subject to the attorney-client or other applicable privileges and accordingly entitled to protection. Nothing contained in these objections is intended as, or shall in any way be deemed, a waiver of such privilege or protection, or any other applicable privilege or doctrine.

2. Plaintiff objects to each and every Interrogatory to the extent the request seeks the information and/or production of documents which are attorney work product. Nothing contained in these objections is intended as, or shall in any way be deemed, a waiver of such privilege or protection, or any other applicable privilege or doctrine.

3. Plaintiff objects to each and every Interrogatory to the extent that the request purports to impose requirements upon Plaintiff beyond those authorized by the Federal Rules of Civil Procedure.

4. Plaintiff objects to each and every Interrogatory to the extent the request calls for Plaintiff to produce information and/or documents that are not reasonably calculated to lead to the discovery of admissible evidence.

5. Plaintiff objects to each and every Interrogatory to the extent the request calls for the production of information and/or documents that are not relevant to any of the issues and matters raised in the complaint.

6. Plaintiff objects to each and every Interrogatory to the extent the request calls for the production of information and/or documents that are outside the scope of discovery allowed.

7. Plaintiff objects to each and every Interrogatory to the extent the request is unduly burdensome and requires Plaintiff to go to extraordinary measures to produce said information and/or documents in violation of the Federal Rules of Civil Procedure.

8. Plaintiff objects to each and every Interrogatory to the extent the request calls for the creation of documents that are not now in existence.

9. Plaintiff objects to the Interrogatories to the extent the requests are vague, overbroad, and not limited in time and scope.

10. Plaintiff objects to the Interrogatories to the extent the requests, including all subparts exceed forty (40), the number which was agreed to by the parties in the Rule 26 Report.

11. The fact that Plaintiff has objected to any Interrogatory, or part thereof, should not be taken as an admission that the Interrogatory or the objection thereto constitutes admissible evidence.

12. The failure to object on a particular ground of grounds shall not be construed as a waiver of Plaintiff's right to objection on any additional ground(s). In addition to the general objections above, set forth below are Plaintiff's specific objections

to the Interrogatories. By setting forth specific objections, Plaintiff does not intend to limit, restrict, or waive the general objections set forth above.

**INTERROGATORIES**

1. Please state your full name, including middle name, and all nicknames or aliases by which you have been known.

**ANSWER:**

**Melvin James Snow**

**Alias: Breadman**

2. Please list the full address of all residences at which you have lived from July 2, 2004, to the present, specifying the dates you lived at each address.

**ANSWER:**

**2271 Bonaparte Blvd Apt 5  
Montgomery, Alabama 36116  
1999 to 2006**

**2802 F Scott Court  
Montgomery, Alabama 36116  
2006 to Present**

3. Identify the following information concerning all employment and/or self-employment you held prior to, or contemporaneously with, your independent distributor relationship with FBC of Opelika:

(a) the name, address, and phone number of each employer and/or self-employment arrangement;

(b) the dates of each period of employment and/or self-employment; and

(c) The reason for leaving each employer and/or self-employment arrangement.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory as being overbroad and not limited in time and scope. Subject to and without waiving the objection, Plaintiff responds as follows:

- (a)
  - (1) **Phillie's Cigar Company**  
Morgan Street  
Selma, Alabama 36701  
(334) 874-7423
  - (2) **Coca Cola Bottling Company**  
300 Coca Cola Road  
Montgomery, Alabama 36105  
(334) 284-9555
- (b)
  - (1) 1987 to 1993
  - (2) 1993
- (c)
  - (1) I took another job.
  - (2) I took another job.

4. Identify the following information concerning all employment and/or self-employment you have held since your independent distributor relationship with FBC of Opelika ceased:

- (a) The name, address, and phone number of each employer and/or self-employment arrangement;
- (b) The dates of each period of employment and/or self-employment; and
- (c) The reason for leaving any such employer and/or self-employment arrangement.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory as being unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the objection, Plaintiff responds as follows:

(a) P & S Meats  
51 County Road 464  
Minter, Alabama 36761  
334-303-5780

(b) 2005 to Present

(c) Not Applicable

5. Identify each person with knowledge, or who you believe has knowledge, of the facts alleged in your complaint, giving the count number(s) and paragraph(s) of which each person has knowledge, or you believe has knowledge.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory as being overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also objects to this Interrogatory as being premature. Discovery has yet to commence in this action and therefore any response is based on information in plaintiff's possession at the time the complaint was drafted. Finally, Defendant already has within its possession all of the information sought by this request. Subject to and without waiving these objections, Plaintiff responds as follows:

**Ricky Small has knowledge of all the facts in the complaint.**

6. Identify each person, other than your attorneys, with whom you have discussed the alleged unlawful acts and alleged damages set forth in your Complaint.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory as being vague, overly broad, and not limited in time. Subject to and without waiving this objection, Plaintiff responds as follows:

**I have not discussed any facts concerning this case with anyone other than my attorney.**

7. Please state each item and amount of damages that you claim and an explanation of how you computed each item of damages, including any mathematical formula used.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory to the extent it seeks information that is subject to protection under the attorney-client privilege or attorney work product doctrine. Plaintiff further

objects to this Interrogatory as being premature as discovery has yet to commence and Defendants have not yet produced any documents or data. Plaintiff does not yet have sufficient information to complete an accurate calculation of damages. Subject to and without waiving this objection, Plaintiff is seeking overtime pay plus interest, attorney fees and costs of litigation. Plaintiff reserves the right to supplement this response as discovery proceeds and as the Court's Scheduling Order permits.

8. Please identify each document pertaining to each item of damages stated in your response to Interrogatory No. 7 above.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory to the extent it seeks information that is subject to protection under the attorney-client privilege or attorney work product doctrine. Plaintiff further objects to this Interrogatory as being premature as discovery has yet to commence and Defendants have not yet produced any documents or data. Plaintiff does not yet have sufficient information to complete an accurate calculation of damages. Subject to and without waiving this objection, Plaintiff is seeking overtime pay plus interest, attorney fees and costs of litigation. Plaintiff reserves the right to supplement this response as discovery proceeds and as the Court's Scheduling Order permits.

9. From July 2, 2004, until you ceased being a distributor for FBC of Opelika, identify all individuals who assisted you in operating your distributorship with FBC of Opelika, including the date(s) each such individual(s) assisted you.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory as being overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Plaintiff responds as follows:

Fred Jeffco, Ricky Bell and Billie Reid have all, on occasion, assisted me in operating my distributorship. I do not remember the specific dates when they assisted me.

10. Identify all persons providing information used to respond to these Interrogatories and/or FBC of Opelika's First Request for Production of Documents and/or all persons assisting in the development of the responses to these Interrogatories and/or FBC of Opelika's First Request for Production of Documents.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory as being premature as discovery has not yet commenced. In addition,

**Plaintiff objects to this Interrogatory to the extent it seeks information protected by attorney-client privilege or attorney work product doctrine. Subject to and without waiving these objections, Plaintiff responds as follows:**

**No person assisted me in responding to discovery.**

11. Have you ever pleaded guilty or no contest/*nolo contendere* to, or been convicted of, any misdemeanor or any felony? If your answer is anything other than an unqualified "no," then state for each such offense, for which you have either been convicted or plead guilty, the following information:

- (a) Nature of the offense;
- (b) Date;
- (c) Court, county, and state in which the matter was pending; and
- (d) The disposition or sentence you were given.

**ANSWER: In addition to the general objections, Plaintiff objects to this Interrogatory as the information it seeks is overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Plaintiff responds as follows:**

**No. I have not plead guilty or not contest to or been convicted of any misdemeanor or felony.**

12. Have you ever been a party to, or witness in, any lawsuit or litigation? If your answer is anything other than an unqualified "no," then state for each case in which you were involved the following information:

- (a) The title and nature of the action and a brief description of your role or part in it;
- (b) The names and addresses of the court and the case number;
- (c) The names and addresses of all parties;
- (d) The date the action was initiated;

- (e) The nature of the allegations; and
- (f) the verdict, judgment, or other outcome of the case.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory as seeking information protected by the attorney-client privilege and the attorney work-product doctrine. Plaintiff also objects to this Interrogatory as the information it seeks is overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Plaintiff will respond with information relating to any employment litigation he has been involved in.

**No. I have not been a party to or witness in any lawsuit or litigation.**

13. If you, or your attorneys, paralegals, or other representatives or agents ever took or received any statement, either orally or in writing, from any person who had any information or knowledge relevant to the alleged unlawful acts or alleged damages set forth in your Complaint, identify each such person who provided a statement, provide the date of each statement, describe the substance of each statement, and identify the current custodian or custodians of such statement(s).

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory to the extent it seeks information that is subject to attorney-client privilege or attorney work product doctrine. Plaintiff further objects to this Interrogatory as the information it seeks is privileged, not relevant, and not reasonably calculated to lead to discovery of admissible evidence. Subject to and without waiving this objection, Plaintiff responds as follows:

**No statements have been taken to my knowledge, information or belief.**

14. Identify all email addresses and hosting website addresses you have had and/or used for the period of July 2, 2004, to date, by providing: the e-mail address and the website address, the internet service provider for each address, the name under which the account was opened and maintained, the time period the account was open and used, and the account number for each account.

**ANSWER:** In addition to the general objections, Plaintiff objects to this interrogatory to the extent it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Plaintiff will respond with any email sites used for his employment with Flowers.

None.

15. Identify all electronic communications devices you have had and/or used for the period July 2, 2004, to date, including the current location of each device. For all electronic devices no longer in your possession, provide the manner in which you disposed of each device and the date on which you disposed of each device.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory to the extent it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Plaintiff will provide the requested information for any communication devices used for his employment with Flowers.

Since 2004, I have had a cellular phone. I have the same phone but a new cellular number.

16. Since July 2, 2004, have you subscribed to or participated in any Internet newsgroup(s) or chat group(s) wherein any of the allegations on this action were discussed or otherwise communicated. If so, list all users and the services you subscribed to and/or participated in.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine. Subject to and without waiving this objection, Plaintiff responds as follows:

None.

17. Identify all accountant(s) and/or other persons, from July 2, 2004, until you ceased being a distributor for FBC of Opelika, who have assisted you with your books, financial statements, and/or tax returns, including address and phone number.

**ANSWER:** In addition to the general objections, Plaintiff objects to this Interrogatory for being overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving that objection, Plaintiff will produce information relating to any accountant(s) and/or other persons that assisted him with any accounting related to his employment at Flowers.

Frank V. Jones  
602 Avenue A  
Opelika, Alabama 36801  
(334)745-0075

18. From July 2, 2004, until you ceased being a distributor for FBC of Opelika, identify all cash accounts you have serviced, including address, phone number, and principal contact at such account.

**ANSWER:** Objection. Plaintiff objects to this Interrogatory as it is vague, overly broad, and the information sought is equally available to Defendants. Indeed, Defendants already have within their possession all of the information sought by this request. Without waiver of this objection, the case accounts I have serviced are:

- (1) Comfort Inn  
1029 Fort Dale Road  
Greenville, Alabama 36037  
(334) 383-9595  
Contact: I do not recall.
- (2) Econo Lodge  
946 Fort Dale Road  
Greenville, Alabama 36037  
(334) 382-3118  
Contact: I do not recall.
- (3) Best Western Inn  
56 Cahaba Road  
Greenville, Alabama 36037  
(334) 382-9200  
Contact: I do not recall.
- (4) I-65 Amoco  
2621 Pineapple Highway  
Greenville, Alabama 36037  
(334) 382-7189

Contact: I do not recall.

- (5) Myrick's Grocery  
3684 Pineapple Highway  
Greenville, Alabama 36037  
(334) 383-9045  
Contact: Wayne Myrick
- (6) Oak Hill Grocery  
5843 Highway 21  
Pine Apple, Alabama 36768  
(251) 746-2517  
Contact: Mr. Bo (I do not know full name)
- (7) Journeys End Sports Grill  
Highway 10  
Camden, Alabama 36726  
Restaurant is closed.  
Contact: Ms. Tibb (I do not know full name)
- (8) Highway 41 Grocery  
8347 Highway 41 South  
Vredenburgh, Alabama 36481  
(334) 337-4621  
Contact: Miss Trudie (I do now know full name)
- (9) McGraw's Grocery  
10740 County Road 56  
Vredenburgh, Alabama 36481  
(334) 337-4377  
Contact: Mr. and Mrs. McGraw
- (10) Sheffield Grocery  
I do not recall the address or phone number.  
Vredenburgh, Alabama 36481  
Contact: I do not recall.
- (11) Hunt's Tiny Diner  
Closed.  
Vredenburgh, Alabama 36481  
Contact: I do not recall.
- (12) Kwik Way  
1198 Main Street  
Beatrice, Alabama 36425  
(251) 789-2387

**Contact: Mr. and Mrs. Sellers (I do not know full names)**

- (13) Chandlers Country Market**  
103 Bryan Street  
Beatrice, Alabama 36425  
(251) 789-2819  
**Contact: I do not recall.**
- (14) Loftin's Bait Shop**  
51 Camden By-Pass  
Camden, Alabama 36726  
(334) 682-9304  
**Contact: Mr. Loftin (I do not know full name)**
- (15) Bones Grocery**  
2233 Camden By-Pass  
Camden, Alabama 36726  
(334) 682-5215  
**Contact: Mr. Bones (I do not know full name)**
- (16) Larry's Drive-In**  
5 Camden By-Pass  
Camden, Alabama 36726  
(334) 682-4069  
**Contact: Larry (I do not recall full name)**
- (17) Hall's Grocery**  
1021 County Road 85  
Minter, Alabama 36  
**Contact: Edward Hall**
- (18) McDonald Grocery**  
1535 Highway 221  
Camden, Alabama 36726  
(334) 682-4523  
**Contact: Mr. McDonald (I do not know full name)**
- (19) Travis's General Store**  
8 Claiborne Street  
Camden, Alabama 36726  
(334) 682-5885  
**Contact: Travis (I do not recall full name)**
- (20) Mac's Grocery**  
16 Claiborne Street  
Camden, Alabama 36726

(334) 682- 4416  
Contact: Mr. McGraw (I do not know full name)

(21) Dallas Soul Food  
Restaurant closed.  
Camden, Alabama  
Contact: Mr. Dallas (I do not know full name)

(22) Snack Shack  
101 Fail Street  
Camden, Alabama 36726  
(334) 682-4137  
Contact: I do not recall.

(23) Roy's Game Room & Package  
1406 James Ephraim Road  
Coy, Alabama 36435  
(334) 337-4998  
Contact: Mr. Roy (I do not know full name)

(24) Howard's Country  
I do not recall the address or phone number.  
Minter, Alabama  
Contact: Mr. Howard (I do not know full name)

(25) Hunters Run  
40 Camden By-Pass  
Camden, Alabama 36726  
(334) 682-5037  
Contact: Frank (I do not know full name)

(26) Franklins  
I do not recall the address or phone number.  
Camden, Alabama  
Contact: Larry (I do not know full name)

19. From July 2, 2004, until you ceased being a distributor for FBC of Opelika, identify all charge accounts you have serviced, including address, phone number, and principal contact at such account.

**ANSWER:** Objection. Plaintiff objects to this Interrogatory as it is vague, overly broad, and the information sought is equally available to Defendants. Indeed, Defendants already have within their possession all of the information

sought by this request. Without waiver of this objection, the charge accounts I have serviced are:

- (1) **Burger King**  
100 Interstate Drive  
Greenville, Alabama 36037  
(334) 382-6484  
Contact: I do not recall.
- (2) **Krystal**  
1020 Fort Dale Road  
Greenville, Alabama 36037  
(334) 382-4754  
Contact: I do not recall.
- (3) **Board of Education Wilcox County**  
2210 Highway 221  
Camden, Alabama 36726  
(334) 682-4409  
Contact: I do not recall. I serviced all of the schools in Wilcox County.
- (4) **Piggly Wiggly**  
12 Camden By-Pass  
Camden, Alabama 36726  
(334) 682-5330  
Contact: Mr. Scance (I do not know full name)
- (5) **Henry's Red & White**  
119 Broad Street  
Camden, Alabama 36726  
(334) 682-4658  
Contact: Mr. Henry (I do not know full name)
- (6) **Grill Grocery**  
I do not recall address or phone number.  
Camden, Alabama  
Contact: I do not recall.

20. From July 2, 2004, until you ceased being a distributor for FBC of Opelika, identify all delivery vehicle(s) you utilized in servicing your territory, including year, make, and model.

**ANSWER:**

- (1) 1999 Chevrolet Step-Van
- (2) 2000 Grand Cherokee Jeep
- (3) Honda Accord.



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OATH

I swear and affirm that the answers to the interrogatories contained herein are true, complete and accurate to the best of my knowledge. I also understand it is my duty to promptly notify my attorney should I later learn that any of the answers are incomplete, inaccurate, or misleading.

Melvin Snow

Sworn to and subscribed before me this 12th day of January, 2007, a Notary Public in and for Jefferson County, State of Alabama

Notary Public Katherine E. Gault  
My Commission Expires: Oct. 12, 2011

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Oct 12, 2011  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

**CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2008, a copy of the foregoing was served on the following counsel via email and U.S. Mail:

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OF COUNSEL

## EXHIBIT D

**National Account Production Summary**

| <b>Bates Range</b>                              | <b>Document</b>                                                                                                                                                                                              | <b>Date Produced</b>   |
|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| FF000650 –<br>FF000665                          | Scan Based Trading Agreement with <b>Winn-Dixie</b>                                                                                                                                                          | 12/28/07               |
| FF002854-<br>FF002860                           | Scan Based Trading Vendor Agreement Worksheet ( <b>Target</b> ) (2003)(w/Target Stores Scan Based Trading Terms and Conditions)                                                                              | 3/27/08                |
| FF000753 –<br>FF000758                          | <b>Wal-Mart</b> & Flowers Pay from Scan Process Protocol Agreement                                                                                                                                           | 1/11/08                |
| FF002924-<br>FF002929<br>FF003062 –<br>FF003070 | <b>Sodexho</b> Agreement (Amendment Number 3)<br><br>(previously omitted information)                                                                                                                        | 3/27/08<br><br>4/25/08 |
| FF002994 –<br>FF003032                          | Regional Distribution Agreement ( <b>Sodexho</b> )                                                                                                                                                           | 4/25/08                |
| FF003033 –<br>FF003047                          | <b>Sodexho</b> Agreement (Amendment Number 1)                                                                                                                                                                | 4/25/08                |
| FF003048 –<br>FF003061                          | <b>Sodexho</b> Agreement (Amendment Number 2)                                                                                                                                                                | 4/25/08                |
| FF002880-<br>FF002906                           | Supplier Business Relationship Agreement ( <b>Sonic</b> )(11/1/06), Vendor Acknowledgement of Code of Conduct and Ethics of Sonic and Subsidiaries, Sonic Business Relationship Agreement Addendum (11/1/06) | 3/27/08                |
| FF002907-<br>FF002923                           | <b>Chick-Fil-A</b> , Inc. Master Vendor Agreement                                                                                                                                                            | 3/27/08                |
| FF002930-<br>FF002941                           | Private Label Agreement ( <b>Southern Family Markets</b> )                                                                                                                                                   | 3/27/08                |
| FBO003262 –<br>FBO003281                        | <b>Wal-Mart</b> Pricing E-mail examples 8/07 & 10/07                                                                                                                                                         | 12/28/07               |
| FBO003247 –<br>FBO003261                        | National Account e-mail examples 8/07 – 10/07 (Wal-Mart, Winn-Dixie, Publix, Fred's, Dollar General, Family Dollar, Burger King, Sonic)                                                                      | 12/28/07               |
| FBO003282 –<br>FBO003287                        | 6/07 Winn Dixie Pricing Example                                                                                                                                                                              | 12/28/07               |
| FF002758                                        | 8/29/07 Letter from Jeff Strain to Scott Sargent re: Price Increases to Chick-Fil-A                                                                                                                          | 1/24/08                |
| FF002759                                        | 6/27/07 Letter from Jeff Strain to Mark Koestner re: Prices Increases to Hardees                                                                                                                             | 1/24/08                |
| FF002760                                        | 6/11/07 Letter from Jeff Strain to Gary Nash re: Price Increases to Hooters                                                                                                                                  | 1/24/08                |
| FF002827 –<br>FF002843                          | Sample Payment Report reflecting allocation of Wal-Mart payment by subsidiary                                                                                                                                | 1/30/08                |

National Account Representative E-mails

| <b>Date</b> | <b>From</b>      | <b>To</b>                | <b>Re</b>                                                     | <b>Bates Range</b>    | <b>Date Produced</b> |
|-------------|------------------|--------------------------|---------------------------------------------------------------|-----------------------|----------------------|
| 10/11/07    | Kim Ford         | Bobby Massanelli, et al. | Wal-Mart Price Increases for Opelika                          | FFE001250 - FFE001258 | 1/24/08              |
| 11/27/07    | Bobby Massanelli | Michael Lord             | Wal Mart PL in Columbus GA                                    | FFE001266             | 1/24/08              |
| 10/15/07    | Doug Brown       | Michael Lord             | PL Increase (Wal-Mart)                                        | FFE001119             | 1/24/08              |
| 10/2/06     | Jeff Strain      | Robbie Watkins, et al.   | Zaxby's Price Increase                                        | FFE000456 - FFE000457 | 1/24/08              |
| 10/18/06    | Jeff Strain      | FBI VPs, et al.          | Upcoming Sonic Promotions                                     | FFE000492 - FFE000494 | 1/24/08              |
| 10/19/06    | Jeff Strain      | Ricky Ward               | Arby's Increase...effective Monday October 30, 2006           | FFE000495 - FFE000496 | 1/24/08              |
| 10/26/06    | Jeff Strain      | Michael Lord             | Hardee's                                                      | FFE000497 - FFE000498 | 1/24/08              |
| 10/26/06    | Jeff Strain      | Bobby Priest             | Old Grand Star Hardee's that are now Corporate owned Hardee's | FFE000499 - FFE000502 | 1/24/08              |
| 6/15/07     | Jeff Strain      | FBI VPs                  | Zaxby's Promo on Kickin Chicken Sand                          | FFE000644             | 1/24/08              |
| 6/15/07     | Jeff Strain      | FBI Presidents, et al.   | Chick-Fil-A                                                   | FFE000647             | 1/24/08              |
| 6/28/07     | Jeff Strain      | FBI VPs                  | Arby's pricing                                                | FFE000659             | 1/24/08              |

| <b>Date</b> | <b>From</b>   | <b>To</b>             | <b>Re</b>                                          | <b>Bates Range</b>       | <b>Date Produced</b> |
|-------------|---------------|-----------------------|----------------------------------------------------|--------------------------|----------------------|
| 7/6/07      | Jeff Strain   | FBI VPs, et al.       | Hooters of America price increase                  | FFE000660 -<br>FFE000661 | 1/24/08              |
| 11/26/07    | Jeff Strain   | Grady Messer          | Upcoming Arby's Features - Montgomery market       | FFE000677 -<br>FFE000679 | 1/24/08              |
| 11/28/07    | Jeff Strain   | Norris McDaniel       | Hooters Price Increase effective December 10, 2007 | FFE000680 -<br>FFE000682 | 1/24/08              |
| 6/27/07     | Charles Avera | Willie Prince         | Target Price Change Forms                          | FFE000689 -<br>FFE000698 | 1/24/08              |
| 6/27/07     | Kim Ford      | Charles Avera         | Opelika Price Increase for Target                  | FFE000699 -<br>FFE000703 | 1/24/08              |
| 7/20/07     | Charles Avera | Willie Prince, et al. | Target - August 13th Pricing                       | FFE000718 -<br>FFE000719 | 1/24/08              |
| 9/28/07     | Charles Avera | Michael Lord          | Price Increases (Target, Kmart, Costco)            | FFE000726                | 1/24/08              |
| 10/4/07     | Michael Lord  | Charles Avera         | Revised Cost Changes for Target                    | FFE000727 -<br>FFE000731 | 1/24/08              |
| 2/8/07      | David Johnson | Betty Easterling      | Bruno Price Changes-Opelika Plant                  | FFE000950 -<br>FFE000962 | 1/24/08              |
| 9/28/07     | David Johnson | Michael Lord          | Price Increases (Bilo's, SFM)                      | FFE001018                | 1/24/08              |

| <b>Date</b> | <b>From</b>    | <b>To</b>        | <b>Re</b>                                                                                         | <b>Bates Range</b>    | <b>Date Produced</b> |
|-------------|----------------|------------------|---------------------------------------------------------------------------------------------------|-----------------------|----------------------|
| 11/12/07    | Grady Messer   | David Johnson    | Prices, Bruno's, Foodworld                                                                        | FFE001025 - FFE001027 | 1/24/08              |
| 11/15/07    | David Johnson  | FBI VPs          | Regular <b>Dollar General</b> Price Increase Dec 3, 2007                                          | FFE000732 - FFE000765 | 1/24/08              |
| 6/15/07     | David Dodge    | Mickey Miller    | 16 oz. Sandwich Bread producing plant move to Savannah from Thomasville ( <b>Dollar General</b> ) | FFE000868 - FFE000872 | 1/24/08              |
| 9/18/07     | David Dodge    | FBI VPs          | Price Increase Information Needed – Dollar General & Family Dollar                                | FFE000917 - FFE000920 | 1/24/08              |
| 9/25/07     | Michael Lord   | David Dodge      | Dollar Store Increases from Opelika. Revised                                                      | FFE000926 - FFE000930 | 1/24/08              |
| 11/26/07    | David Dodge    | FBI VPs          | <b>Dollar General, Family Dollar, Fred's</b> new pricing starts next week                         | FFE000931             | 1/24/08              |
| 6/19/07     | Michael Lord   | Bobby Massanelli | Opelika Price Changes ( <b>Wal-Mart</b> )                                                         | FFE001210 - FFE001215 | 1/24/08              |
| 7/25/07     | Steve Bordeaux | Bobby Massanelli | <b>Wal-Mart</b> P/Label price increase                                                            | FFE001224             | 1/24/08              |

| <b>Date</b> | <b>From</b>       | <b>To</b>                  | <b>Re</b>                                  | <b>Bates Range</b>           | <b>Date Produced</b> |
|-------------|-------------------|----------------------------|--------------------------------------------|------------------------------|----------------------|
| 12/16/05    | Jeff Strain       | FBI VPs, et al.            | <b>Sodexho</b> Price Increase              | FBOE001490 -<br>FBOE001498   | 1/24/08              |
| 8/22/07     | Rick Rowan        | Norris<br>McDaniel, et al. | <b>Krystal</b> Price Increase Approved     | FBOE0000693 -<br>FBOE0000694 | 1/24/08              |
| 12/18/06    | Robert<br>Meadows | Willie Prince,<br>et al.   | <b>Winn Dixie</b> DSD Forms                | FFE001268 -<br>FFE001272     | 1/24/08              |
| 12/5/06     | Jim Williams      | Mike McCall,<br>et al.     | Guidelines for<br>calling on <b>Publix</b> | FBO003291 -<br>FBO003293     | 12/28/07             |
| 6/15/06     | Craig White       | FBI VPs                    | <b>Burger King</b> Price Increase          | FBOE001074 -<br>FBOE001075   | 1/24/08              |

## EXHIBIT E

K. LAUDER

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

CHARLES MORROW and MICHAEL  
OVERTON, individually and on  
behalf of similarly situated  
employees,

Plaintiffs,

vs.

CIVIL ACTION NO.

3:07-CV-617-MHT

FLOWERS FOODS, INC., AND  
FLOWERS BAKING CO., OF  
OPELIKA, LLC,  
Defendants.

~~~~~

VIDEOTAPED DEPOSITION OF

KARYL HALSTEAD LAUDER

January 30, 2008

1:25 p.m.

Ogletree Deakins Nash Smoak & Stewart, P.C.

2100 Bank of America Plaza

600 Peachtree Street

Atlanta, GA 30308

Thomas R. Carey, CCR-B-1715

VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

K. LAUDER

Page 2

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24

25

K. LAUDER

Page 3

1 APPEARANCES OF COUNSEL (continued)

2

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13 kevin.hishta@ogletreedeakins.com

14

15 Also present: Videographer Ben Jones

16 Stephanie B. Tillman, Esq.

17 Vice President and Associate

18 General Counsel Flowers Foods, Inc.

19

20 Deposition of Karyl H. Lauder

21 January 30, 2008

22

23

24

25

K. LAUDER

Page 4

1 DISCLOSURE

2

3 Pursuant to Article 8(B) of the Rules and  
4 Regulations of the Board of Court Reporting of the  
5 Judicial Council of Georgia, I make the following  
6 disclosure:

7 I am a Georgia Certified Court Reporter,  
8 here as a representative of Brown & Gallo, L.L.C.,  
9 to report the foregoing matter. Brown & Gallo,  
10 L.L.C., is not taking this deposition under any  
11 contract that is prohibited by O.C.G.A. 5-14-37  
12 (a) and (b).

13 Brown & Gallo, L.L.C., has agreed to  
14 provide reporting services for VERITEXT, LLC - NY,  
15 the terms of which are as follows:

16 The above mentioned referring firm will do  
17 production and billing of transcripts of this matter.

18

19

20

21

22

23

24

25

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K. LAUDER

Page 5

1 VIDEOTAPED DEPOSITION OF KARLY HALSTEAD LAUDER

2 JANUARY 30, 2008

3  
4 VIDEOGRAPHER: Today's date is  
5 January 30th, 2008. The time is approximately  
6 1:26 p.m. The deponent is Ms. Karyl Lauder.  
7 Will counsel please identify themselves for the  
8 record.

9 MR. GUGLIELMO: Joseph Guglielmo with  
10 Whatley Drake & Kallas for plaintiffs.

11 MS. WEAVER: Amy Weaver, Whatley Drake &  
12 Kallas for plaintiffs.

13 MR. DAVIS: Greg Davis for the plaintiffs.

14 MS. TAYLOR: Stephanie Tillman for Flowers  
15 Foods.

16 MS. HANRAHAN: Maggie Santen Handerhan  
17 with Ogletree Deakins for the defendants.

18 MR. GRIGEREIT: David Grigereit, Ogletree  
19 Deakins for the defendants.

20 MR. HISHTA: Kevin Hishta with Ogletree  
21 Deakins for the defendants.

22 VIDEOGRAPHER: Will the Court Reporter  
23 please swear in the witness.

24 KARYL LAUDER, having been first duly  
25 sworn, was examined and testified as follows:

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K. LAUDER

Page 6

1 MR. GUGLIELMO: Kevin, before we begin, do  
2 you want to also read into the record the  
3 topics that Ms. Lauder will be testifying to  
4 today?

5 MR. HISHTA: Yes. Thank you. Ms. Lauder  
6 is a Flowers Foods designee for this 30(b)(6)  
7 deposition for the inquiry set forth in Item 7  
8 of Defendants Reply Brief, which was approved  
9 by the Court's Order of November 27th, 2007.  
10 And that inquiry is Flowers Foods involvement  
11 in the determination of who was responsible for  
12 any losses sustained by Flowers Opelika and  
13 Flowers Thomasville, or independent  
14 distributors of Flowers Opelika and Flowers  
15 Thomasville from July 2, 2004 to date.

16 This would include testimony regarding the  
17 parent subsidiary consolidated accounting  
18 between Flowers Foods and Flowers Opelika, and  
19 Flowers Foods and Flowers Thomasville.

20 Inquiry No. 8 is partially duplicative of  
21 Inquiry No. 7. Inquiry No. 8 also covers the  
22 accounting methodology utilized by Flowers  
23 Opelika and Flowers Thomasville for distributor  
24 accounting from July 2, 2004 to date.

25 EXAMINATION

K. LAUDER

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1 Q And that included the Specialty Division?

2 A That included the Specialty Division as  
3 well as the Bread Group.

4 Q Ms. Lauder, do you have an understanding  
5 of the type of accounting information that Flowers  
6 Food maintains regarding the route distributors?

7 A Flowers Foods itself doesn't maintain the  
8 route information. The route information for  
9 specific bakeries are maintained on their own  
10 subsidiary ledgers, their own set of books.

11 Q Do you know what type of information the  
12 subsidiaries maintain regarding the independent  
13 route distributors?

14 A They maintain an SAP in our accounting  
15 system. The detail of the orders and the invoices  
16 resides in SAP. We also have two other accounting,  
17 or not accounting, but two data warehouses that  
18 maintain sales data warehouse information, which is  
19 invoice detail, as well as a Pay-By-Scan repository  
20 where all the data is collected for Pay-By-Scan  
21 customers.

22 Q With respect to the information that the  
23 subsidiaries maintain on the route distributors,  
24 does Flowers Food have access to that information?

25 A Upon request they will submit information

K. LAUDER

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1 to corporate if we request it. But they maintain  
2 all of their own paperwork, backup copies of  
3 Distributor Statements, invoices, things like that  
4 they maintain at the plant level, at the subsidiary  
5 level.

6 Q And that would be the same for the detail  
7 orders and the invoices that you described?

8 A Yes. I mean, we have access through SAP  
9 because it is an integrated system, but the detail  
10 is maintained by the plants.

11 Q And with, again, there is two other data  
12 invoice detail systems, am I correct or am I  
13 mistaken?

14 A The sales data warehouse is where we  
15 maintain detail of deliveries to specific customers  
16 by route, by region, by plant. And basically it's a  
17 data warehouse to run various reports for reporting  
18 sales to customers, or sales by distributor, that  
19 type of -- the plants have access to the data  
20 warehouse for their own information, for the, with  
21 regard, related to their own plants. As well as we  
22 have a business analysis team that can run  
23 consolidated reports using that information.

24 Q And so, just so I'm clear, that data, the  
25 sales data warehouse, is that data that is in the

K. LAUDER

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1 possession of Flowers Foods?

2 A It's on, it resides on a server that's  
3 located at Flowers Foods.

4 Q So individuals such as yourself would have  
5 access to that data?

6 A Yes.

7 Q Okay. And then, just so I'm clear, again,  
8 individuals at the particular bakeries would have  
9 access to their bakery's specific information as  
10 well?

11 A Yes.

12 Q And that is separate from the Pay-By-Scan  
13 information?

14 A That's right.

15 Q And how is the Pay-By-Scan information  
16 maintained?

17 A The server that we use for Pay-By-Scan is  
18 also housed at corporate. Various reports are  
19 generated on a weekly basis that contain the data by  
20 route, by customer, by plant. And that information  
21 is, the plants can access that information for their  
22 individual plants as well as running consolidated  
23 reports for customers at the division level.

24 Q By, for clarity, you say running reports  
25 for customers, who are you referring to?

K. LAUDER

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1           A     Our Pay-By-Scan customers, there is  
2     probably 10 or 12.

3           Q     So an example of a Pay-By-Scan customer  
4     would be like a Wal-Mart?

5           A     Yes. Wal-Mart, Winn-Dixie, and we have  
6     several other, Food Lion, Target.

7           Q     To the extent they would ask for a report  
8     you would, you could run it from the data that is  
9     maintained at the sales data warehouse?

10          A     Yes.

11          Q     And is it also maintained in the  
12     Pay-By-Scan database?

13          A     That's right.

14          Q     Can you give me in your own words what  
15     your understanding of Pay-By-Scan accounts are?  
16     What is your understanding of what Pay-By-Scan is?

17          A     The Pay-By-Scan process is where the  
18     customer does not pay for a product that is  
19     delivered to their store until it is scanned through  
20     the register. They don't accept the product as  
21     delivered to their store until it actually scans.

22          Q     And then with respect to the data  
23     pertaining to a Pay-By-Scan store, do you have an  
24     understanding of the process of where that data goes  
25     with respect to those sales, how it would end up in

K. LAUDER

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1 a consolidated financial statement?

2 A It's accumulated at subsidiary level, and  
3 then those totals are rolled up at a summary level  
4 at Bakery Division, because that's the division that  
5 has Pay-By-Scan.

6 Q So is it fair to say that the information  
7 with respect to a particular Pay-By-Scan customer  
8 would be, would be, would go to the bakery and then  
9 from the bakery would go to Flowers Foods?

10 A Yes. It's on, it resides on a server, so  
11 once it's in the system, it's in both places. But  
12 it's produced from the hand-held invoices that the  
13 individual distributors produce in their hand-helds.

14 Q Do you have an understanding what the  
15 process is for the individual distributor to provide  
16 this information to the bakery?

17 A Yes, it's communicated through their  
18 hand-held. For a customer that is a Pay-By-Scan  
19 customer there is a flag in the system that says  
20 that this customer is a Pay-By-Scan customer. So  
21 the invoice is flagged when it comes in.

22 The distributor receives credit on  
23 his weekly statement for that, those deliveries that  
24 are generated off that invoice. Even though  
25 technically Flowers can't, Flowers can't accept that

K. LAUDER

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1 invoice as, to be billed to the Pay-By-Scan customer  
2 because the customer hasn't accepted it because it  
3 hasn't scanned through the register, because they  
4 don't accept it until then, until that point.

5 But we give the distributor temporary  
6 credit until that scanned item comes in, so he gets  
7 credit in the week he makes the delivery as opposed  
8 to the following week when the scanned data comes in  
9 from the customer.

10 Q The scanned data reflecting the purchases  
11 from those Pay-By-Scan accounts?

12 A That's right.

13 Q Is there a physical process where the  
14 distributor uploads or downloads his information on  
15 his hand-held to the bakery, or --

16 A There is an end-of-day procedure where all  
17 the information that the distributor captures in his  
18 hand-held, that is then transmitted up to the  
19 individual bakery that he works out of. That  
20 information then is accumulated and totaled and goes  
21 into SAP and is processed on consolidated, or sent  
22 to the sales data warehouse or Pay-By-Scan.

23 Q Is that, is it your understanding that it  
24 is accumulated on a periodic basis, like a weekly  
25 bases, monthly?

K. LAUDER

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1 A No, it goes in daily.

2 Q All right. And then that gets rolled up  
3 into a, I think it's rolled up, I'm trying to use a  
4 technical term, that data then gets entered into  
5 the, either the Pay-By-Scan or the sales data  
6 warehouse?

7 A It's not an either/or process.  
8 Pay-By-Scan's only in Pay-By-Scan. That information  
9 is only there. The information that is in  
10 Pay-By-Scan is also in the sales data warehouse,  
11 because the information that is in sales data  
12 warehouse is all the accumulated invoice information  
13 that comes in through the hand-held, into SAP, and  
14 from SAP into SDW. So are the invoices that are  
15 generated.

16 Q So whether or not it's Pay-By-Scan --

17 A It's in SDW.

18 Q It's in SDW. Easier to say what you are  
19 saying rather than what I'm saying.

20 But also, so the converse there is,  
21 there is a subset of data from the sales data, or  
22 SDW that is in Pay-By-Scan?

23 A Yes.

24 Q Okay. Is there anything that is in  
25 Pay-By-Scan that is not in the SDW?

K. LAUDER

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1           A     The, we run calculations for price in  
2     variances or shrink based on the inventory that's  
3     loaded into the hand-held at the end of the week.  
4     When the distributor takes his physical inventory of  
5     the product, then the store at the end of the week,  
6     that inventory value goes in, or quantity and value  
7     goes into the Pay-By-Scan system. That doesn't go  
8     into SDW.

9           Q     Is there anything else that would go in  
10    the Pay-By-Scan and not the SDW?

11          A     Since it's just the information of the  
12    detail of what's on those delivery invoices. The  
13    scan data that comes in from the customer is matched  
14    in the Pay-By-Scan system.

15          Q     Okay. Let me, so, in addition to whatever  
16    data the distributor may send via his hand-held,  
17    the, for Pay-By-Scan, the customer likewise would  
18    send data, obviously, on those products that have  
19    been scanned?

20          A     That's right.

21          Q     And that would go to -- where would that  
22    go?

23          A     That comes in an electronic file that has  
24    been loaded into the Pay-By-Scan system. It goes  
25    down to the detail, the detail item by store, which

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1 is assigned to a particular route, or a distributor  
2 that is assigned to a particular bakery.

3 Q And so does that, do the customers in the  
4 Pay-By-Scan, do they send their data to Flowers  
5 Foods, or do they send them to the bakery?

6 A They send it to Flowers Bakeries Group.

7 Q Okay.

8 A Because it's, you know, he's sending all  
9 the information to one place.

10 Q Okay. Then Flowers Bakery Group, are they  
11 responsible for putting it into the Pay-By-Scan  
12 database?

13 A Yes.

14 Q And with respect to the sales, SDW, you  
15 said that the data can be, the data can be provided  
16 by route, by region, or by plant. Can you explain  
17 to me what you meant by that?

18 A Well, you could pull information in a lot  
19 of areas and formats. If you want to just look at  
20 the deliveries made by one individual distributor,  
21 you can pull his information that shows all the  
22 individual customers that he serves, the detail of  
23 all the products that got delivered, even the  
24 product that was picked up as stale product, you  
25 know, what had special pricing and allowances on it.

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1 All that data is captured at invoice  
2 level, at product level on the invoice. So all of  
3 that information can be accumulated, and you can  
4 view it either by route level, it shows all the  
5 detail by his individual customers, or you can pull  
6 all the information from all the distributors that  
7 serve a particular customer in store, you know,  
8 format, or you can look at that information by a  
9 particular branch or region, in a particular area if  
10 you're trying to just gather relevant information on  
11 some, you know, you are trying to make an analysis  
12 of some type and you need that information.

13 Q So information pertaining to the routes  
14 serviced by an independent distributor would be,  
15 would be maintained in the SDW, in other words?

16 A Yes.

17 Q Okay. And so, as I understand it, the  
18 data that is provided by the route distributor would  
19 get put from the hand-held, would end up coming  
20 into, and that data ends up going into the SDW?

21 A Right. Additionally it goes to SAP. It  
22 goes to SAP, and it goes through a server at the  
23 plant location where it's consolidated. Then it is  
24 loaded into SAP. And SAP sends the information to  
25 SDW.

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1                   We put the information in SDW because  
2   it's a tool we can use to analyze with that you  
3   can't, I mean, you can do it with SAP, but it's,  
4   there is so much data there that it's hard to get  
5   the information you want to see. So it's an easier  
6   tool to use for sales analysis. It's a tool.

7           Q     Okay. Let me, so I'm clear, SDW also  
8   contains data concerning national accounts as well  
9   as local accounts?

10          A     Right. You could select, I mean, you  
11   could choose to run the report based on the national  
12   account if you wanted to, rather than the individual  
13   bakery or route level.

14          Q     So the distributor takes the information  
15   and puts it into the hand-held. Can you take me  
16   through the steps of how that data then gets  
17   reconciled so that the distributor then gets a  
18   remittance saying how much he either is to be paid,  
19   or how much, or how much income he's going to earn,  
20   or whether he owes money with respect to the  
21   particular, his particular route?

22          A     Okay. In the settlement process, and it's  
23   shown on the Distributor Statement, it starts off  
24   with his prior balance forward. If he didn't settle  
25   to zero the prior week, he'll have a balance forward

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1 on his statement. Then he will be charged with all  
2 of the products that he accepted in his hand-held as  
3 received on his truck on a daily basis as  
4 accumulated on a weekly total.

5 He's then issued various credits if  
6 he had product that he transferred from his route to  
7 another route, or credits for load shortages. When  
8 he checked his load, if he saw that he didn't get  
9 everything that he was charged with, he can take a  
10 credit. That would show up. If he generated  
11 invoices that were different in price from what he  
12 was charged, what he delivered to the customer, that  
13 would create an allowance. He would get credit for  
14 that.

15 He picks up product out of the retail  
16 store and takes it back, he would get stale credit  
17 for that product. And that really is the gross  
18 amount that he starts with, less those various  
19 deductions, and all of those are factored in with  
20 his discount that he earns, either in what he takes  
21 out or what he brings back. The net of those, and  
22 he gets his net discount on his statement then.

23 Then he also receives credit on the  
24 statement, or against his load that he took out for  
25 authorized charge accounts that he turns in invoices

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1 for on customers that are non-Pay-By-Scan customers.  
2 The company has approved authorized charges that  
3 they will accept that invoice as payment on his  
4 account. Because if we then, in turn, bill the end  
5 customer, and then collect the money from them on  
6 behalf of the distributor, it makes it -- it's a  
7 much simpler process for the customer, because they  
8 don't want to write separate checks to every  
9 distributor that comes into their stores.

10 But we give him credit then for those  
11 invoices as long as he turns his invoices in. And  
12 then we give him, on the statement then he receives  
13 credit for the scanned data that the company  
14 receives from the Pay-By-Scan customers from the  
15 previous week. Because it's always a week in  
16 arrears by the time it's received from the customer  
17 process and goes in on his weekly statement.

18 He also receives credit for any kind  
19 of difference in the total amount of the invoices  
20 generated, or the scan data that comes in. His  
21 physical inventory in the store, he receives a  
22 credit for those, what at that point in time is  
23 truly shrink, its missing units. He gets full  
24 credit for that.

25 And then he has -- that is really the

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1 adjustments that were made on what he was charged  
2 with, whether it was a credit that he received or  
3 some shortage of some product on his load, or, in  
4 this instance it looks like he had some damaged  
5 product that he got credit for.

6 Q And then it's looks like that portion of  
7 this document goes on for two pages. And then there  
8 is another heading on Bates ending 5834. It says,  
9 "FBC of Opelika, Distributor Transfer Adjustments,"  
10 do you see that?

11 A That's right. That would be products that  
12 either he transferred out to another distributor, or  
13 he transferred in from another distributor, or he  
14 could transfer it in from the bakery itself. If  
15 it's an additional product that he needed it, he  
16 didn't order or didn't get, he could transfer the  
17 product in to get the information in his hand-held  
18 to be available for sale.

19 Q Okay. That looks like that goes on for  
20 about two pages. And then the next heading with  
21 Bates ending 5836, "FBC of Opelika, Price Allowance  
22 and override." Do you see that?

23 A That's right.

24 Q What is that?

25 A That shows the difference between what,

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1 the price that he put through his hand-held, the  
2 difference between the price that he was charged  
3 with, the gross price that he was charged with and  
4 the price that he entered on the invoice when he  
5 generated the invoice.

6 So if he was charged a dollar for a  
7 particular product, and then there was a feature  
8 going on in the grocery store where he could only  
9 charge the customer 90 cents, then he gets his ten  
10 cents credit back. Because his invoice is only  
11 going to have 90 cents on it, but in order to make  
12 him whole for the whole dollar, then he gets credit  
13 for the ten cents.

14 Q Is that an override or an allowance?

15 A That would be an allowance. That would  
16 be -- an override would be where he goes into his  
17 hand-held, and there is a price in the hand-held  
18 that is established for a particular customer, and  
19 he overrides that price. He goes in and puts in a  
20 price that is different than that price.

21 Q Okay. This part of this document, looks  
22 like it goes on for a few more pages, then there is  
23 another heading beginning on Bates ending 5840, it's  
24 the, "Distributor Stale Summary." Do you see that?

25 A Yes.

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1 Q What is that?

2 A That is the summary, the detail summary of  
3 the total stale, stale product that he picked up out  
4 of the grocery stores or restaurants, wherever he  
5 picked the product up that was unsalable. He  
6 generally, he gets a credit back for that product as  
7 well, because he's issued a credit to the customer,  
8 this way he gets his credit back so he remains  
9 whole.

10 Q Looks like the last page ending in Bates  
11 5843, "FBC Opelika, Route Discount Totals." Do you  
12 see that?

13 A That's the, that just summarizes all the  
14 pieces of the gross less the distributor discount to  
15 the net amount that he's charged with on the face of  
16 this statement. This is just, it starts off with  
17 the gross amount less his discount to the net amount  
18 that he's charged on his statement.

19 Q And just so I'm clear, the document we've  
20 been looking at that we marked as Exhibit 10, all of  
21 these various sub, I'd call them sub-reports, but I  
22 don't know what, the terminology you would use,  
23 those are all provided on a weekly basis to the  
24 distributors?

25 A Yes.

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1 closest to December 31st.

2 Q Okay. What does company code refer to?

3 A Company code would refer to the identifier  
4 of the individual subsidiary as part of Flowers  
5 Foods.

6 Q It would be the bakery that that  
7 distributor picks up his bread?

8 A Right. All Flowers Bakeries plants start  
9 with 01. All Flowers Specialty plants start with  
10 03. And then the second to, the last two numbers  
11 are the plant number.

12 Q So 05 is Opelika?

13 A Right.

14 Q You can put that document aside.

15 VIDEOGRAPHER: The time is approximately  
16 2:17 p.m. We're off the record.

17 (WHEREUPON, a brief recess was  
18 taken)

19 VIDEOGRAPHER: Time is approximately 2:19  
20 p.m. We're back on the record.

21 (Marked for identification  
22 purposes, Plaintiff's Exhibit  
23 No. 11 )

24 Q (By Mr. Guglielmo) Ms. Lauder, have you  
25 had a chance to take a look at this document?

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1 A Yes.

2 Q Have you seen this document before?

3 A Yes.

4 Q Do you know what it is?

5 A It's a payment advisory report. It's a  
6 detail of electronic payment from, this particular  
7 instance from Wal-Mart for a select portion of their  
8 payment. It details the invoices paid by and sums  
9 it up by location on which plan it's for.

10 Q Is this what you were referring to when  
11 you were talking about the certain types of data  
12 from the SDW can be organized by customer?

13 A This actually is information provided by  
14 the customer, not from the SDW system.

15 Q Okay.

16 A This is just basically Wal-Mart submitting  
17 us remittance advice on the payment that they are  
18 going to send us.

19 Q Okay. So I'm clear, that Wal-Mart would  
20 transmit this information to, Wal-Mart would submit  
21 this information regarding its, regarding Flowers  
22 product to Flowers Foods?

23 A That's right.

24 Q And then this information would then be --  
25 what would be done with this information at Flowers?

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1           A     Since the accounts receivable trade  
2     customer balances are maintained on the  
3     individually, individual subsidiaries' ledgers, the  
4     payment had to be broken down to which bakery, which  
5     invoices, which store, which bakery they belong to  
6     before they can be applied to the balance sheet, to  
7     the customer's account. Because we don't  
8     consolidate everything into one super account. We,  
9     it remains the responsibility of the individual  
10    subs, and then that is how we have to apply payment.

11          Q     So the information comes in to Flowers  
12    Foods and then Flowers Foods then transmits this  
13    information to the various subsidiary bakeries?

14          A     The payment application process itself is  
15    housed in our shared services center, which is in  
16    Thomasville. We, in our, the accounting shared  
17    services center we maintain the payment application  
18    process, the billing, the payment application  
19    process for the bakeries to the customers, receive  
20    the payments back, and apply them to the accounts.  
21    And also we receive the invoices then from the  
22    plants and pay the accounts payable side in a  
23    centralized function.

24                   Then we charge the bakeries for that  
25    service. They don't have to maintain administrative

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1 personnel. So we charge them on a fee basis based  
2 on the number of invoices processed for them, the  
3 amount of cash applied, those type things. It's  
4 like a fee-based service.

5 Q Okay. So the reconciliation process, is  
6 that also done at Flowers Foods with respect to the,  
7 with respect to this information that comes in from  
8 Wal-Mart?

9 MR. HISHTA: I'm not sure we're correct on  
10 our terminology.

11 MR. GUGLIELMO: I'm sure I'm not.

12 MR. HISHTA: I mean, just as far as the  
13 entity, which entity is shared services with?

14 THE WITNESS: Flowers Foods.

15 MR. HISHTA: Okay.

16 Q (By Mr. Guglielmo) And so my question to  
17 you is with respect to that, the process that you've  
18 just described, is there sort of, does the  
19 reconciliation between the information you received  
20 from the distributors and the information you then  
21 receive from the, an account such as Wal-Mart, does  
22 it get reconciled at Flowers Foods or does it get  
23 reconciled at the bakeries?

24 A Well, for Wal-Mart, because it's a  
25 Pay-By-Scan account it's reconciled at the bakery

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1 based on the Pay-By-Scan data. Because the  
2 information transmitted by, from Wal-Mart for the  
3 scan data goes into Pay-By-Scan. And that's what  
4 the reconciliation process is on the Distributor's  
5 Statement.

6 As far as applying the, applying the  
7 payment to the account, it's, Wal-Mart sends you a  
8 file that says, "this is what is scanned, this is  
9 what I'm going to pay you for." So then when the  
10 payment comes in, it matches. It's the same thing.  
11 It's two different files, but it matches because  
12 they say, "this is what I scanned, and I'm paying  
13 you, this here is your check." So that piece of it  
14 is separate from the Pay-By-Scan piece of it.

15 Q Okay. So with respect to the Pay-By-Scan,  
16 that sort of, sort of a, sort of, the process is  
17 sort of a one-step process, as I would describe, as  
18 I would understanding it?

19 A As far as the payment into accounts  
20 receivable.

21 Q Okay. And then the non-Pay-By-Scan  
22 accounts, how are those handled?

23 A Typically on national accounts the  
24 customer chooses to write one check. It comes to  
25 the shared services center, the checks, or it goes

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1 to a bank account. It doesn't actually physically  
2 come to shared services center, but then the  
3 payment, we receive remittance advice where the  
4 payment can be broken out to the individual subs and  
5 applied on specific invoices on specific days and  
6 paid out into their accounts receivable.

7 Q And then the reconciliation process  
8 between what is paid by the national account and  
9 what the distributor entered as sort of the sales,  
10 where does that occur?

11 A Once the payment's applied, if there are  
12 open amounts, open balances, invoice differences,  
13 then that is resolved through the plant. The  
14 individual plant is responsible for reviewing the  
15 account's balance to ensure if there is missed  
16 invoices, skipped invoices, that type of thing.

17 Then they have to be partially  
18 responsible for that collection effort. Number one,  
19 to ensure that the information, that they have all  
20 the invoices. But then we have a, it's a  
21 coordinated effort between the plant and then the  
22 shared services person that is assigned to make the  
23 payment application for their bakery.

24 MR. HISHTA: For the record I think she  
25 answered your question with respect to the

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1 payment of the outstanding accounts receivable  
2 with respect to the subsidiaries. I don't  
3 think she was answering any portion of that  
4 question regarding any reconciliation with a  
5 particular distributor. But the way --

6 MR. GUGLIELMO: No, I was trying to  
7 understand what the, where, if any, where the  
8 reconciliation process takes place. I wasn't  
9 looking at it at the distributor level, I was  
10 looking at it sort of at a macro level.

11 MR. HISHTA: You were looking at the  
12 reconciliation process of the accounts  
13 receivable that are outstanding at the  
14 sub-level and how that is done.

15 MR. GUGLIELMO: Yes. Ms. Lauder, I'm  
16 going to mark as Flowers Foods 12 a document  
17 bearing Bates No. FF000753 through 758.

18 (Marked for identification  
19 purposes, Plaintiff's Exhibit  
20 No. 12 )

21 Q (By Mr. Guglielmo) Ms. Lauder, have you  
22 had a chance to take a look at this document marked  
23 Flowers Exhibit 12?

24 A Yes.

25 Q Do you know what this document is?

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1           A     This is the Protocol Agreement between  
2 Wal-Mart and Flowers Bakeries establishing what the  
3 process is for Pay-By-Scan delivery in their stores.

4           Q     And can you in layman's terms explain to  
5 me what this document intends to do?

6           A     It establishes when deliveries are  
7 permissible, how they are to take place, who  
8 maintains responsibility for the inventories, how  
9 the inventories would be conducted, the transmission  
10 of item price synchronization, the, how they're  
11 going to, when Wal-Mart is going to transmit the  
12 scan data to Flowers, the timing of those  
13 transmissions, and the process to, the backup  
14 process in case some scan data is lost for some  
15 reason, and then the calculation on the product  
16 shrink and their agreement to pay a portion of that  
17 shrink.

18          Q     Do you know who enters into this agreement  
19 with Wal-Mart?

20          A     Typically our Chief Information Officer,  
21 Vyto Razminas negotiates or, goes through the  
22 process, because it's such a technical process  
23 between not only our system, but their system. All  
24 of the information has to match exactly to make it  
25 work. And it takes the technical knowledge that

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1 they have to know that the information is going to  
2 communicate back and forth, you know, sending  
3 information back and forth.

4 Q Just so I'm also clear, would this  
5 document marked as Exhibit 12, would this apply to  
6 all of the purchases by Wal-Mart, that all the  
7 purchases by Wal-Mart, or is it a bakery-by-bakery  
8 agreement?

9 A It would cover all the Wal-Marts. This  
10 particular agreement was the initial agreement that  
11 only specifies one store. This was what was used at  
12 the roll-out when we first contemplated doing  
13 Pay-By-Scan at Wal-Mart's request. So it only lists  
14 one store.

15 But between 1999 and today all of  
16 Wal-Mart stores, all their business goes by  
17 Pay-By-Scan under the Wal-Mart banner, not Sam's.

18 Q And just so I'm clear Mr. Razminas,  
19 Razminas?

20 A Razminas.

21 Q What is his title?

22 A Flowers Foods Chief Information, VP and  
23 Chief Information Officer.

24 Q And has he been responsible for the  
25 negotiation of the Pay-By-Scan Agreement with

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1 Wal-Mart throughout the time period 1999 to now?

2 A For any change, or any change as far as  
3 any data transmission, timing of those, what is in  
4 the data, the file format, that type of information,  
5 then he would be responsible for that.

6 Just as new stores open up in the,  
7 you know, Wal-Mart opens up new stores and we roll  
8 those into the Pay-By-Scan program, that's  
9 communicated through the plant. The plant contacts  
10 Chad Wooten, who is our Pay-By-Scan Manager to get  
11 the maintenance set up in the system so it will  
12 accept. It.

13 There is, it's like setting up a new  
14 account type thing. He doesn't, Vyto does not act  
15 in all of that. He just, he's there now to make  
16 changes if there is anything different.

17 Q And what is Mr. Wooten's title or  
18 position?

19 A Pay-By-Scan supervisor.

20 Q Pay-By-Scan for Flowers Foods?

21 A For Flowers Foods.

22 Q Other than Mr. Razminas and Mr. Wooten,  
23 are there other people involved or responsible for  
24 the Wal-Mart Pay-By-Scan Agreement?

25 A The agreement itself?

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1 Q The negotiation of the, the terms of the  
2 agreement, yes.

3 A No. The negotiation of the agreement  
4 itself, the national accounts representative for  
5 Wal-Mart is involved in the process, but this  
6 agreement was negotiated in 1999. It hasn't changed  
7 other than some file format changes and things like  
8 that. So this agreement is still in place.

9 MR. HISHTA: For the record the protocol  
10 is in place, the sharing arrangement with  
11 Wal-Mart is no longer in place. Wal-Mart no  
12 longer shares the shrink.

13 Q (By Mr. Guglielmo) Okay. Just for we're  
14 clear for the record, the document marked as 12 is  
15 still in effect, there is just certain portions of  
16 it that may not be in effect?

17 A That's right.

18 MR. GUGLIELMO: Mark as Flowers Foods 13 a  
19 document bearing Bates No. FF000650 through  
20 665.

21 (Marked for identification  
22 purposes, Plaintiff's Exhibit  
23 No. 13 )

24 Q (By Mr. Guglielmo) Ms. Lauder, have you  
25 had a chance to take a look at the document marked

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1 as Flowers Foods 13?

2 A Yes.

3 Q Do you know what this is?

4 A Yes, this is the Scan Based Trading  
5 Agreement between Winn-Dixie and Flowers bakeries.

6 Q And can you describe for me generally  
7 what, what this document intends to do?

8 A Similar to the Wal-Mart, it describes the  
9 delivery merchandising for the store's inventory,  
10 information systems, transmits, file transmissions,  
11 covering of lost data, a calculation of inventory  
12 shrink, and payment terms.

13 Q And who is responsible for negotiating  
14 this agreement?

15 A Vyto Razminas and the customer. At this  
16 time their Director of Grocery was Philip Payman.

17 Q And is Mr. Wooten also involved with  
18 respect to this Pay-By-Scan Agreement?

19 A Yes. Well, he was not involved in this,  
20 the execution of this agreement, but he's involved  
21 in the day-to-day maintenance on the account of  
22 adding new stores, if they close a store, taking one  
23 out of the system, that type of thing.

24 Q And other than the Winn-Dixie Agreement  
25 and the Wal-Mart Pay-By-Scan Agreement, are you

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1 aware of any other Pay-By-Scan Agreements between  
2 Flowers and any other national customers that would  
3 be serviced by route distributors?

4 A Not for the Opelika and Thomasville  
5 bakeries. We do have other agreements.

6 Q Okay. But they wouldn't include any route  
7 distributors that service Flowers Opelika or Flowers  
8 Thomasville?

9 A Yes.

10 Q So I'm clear, there is not --

11 A Well, no, just --

12 MR. HISHTA: There are no plaintiffs in  
13 this lawsuit that have a Pay-By-Scan account  
14 other than Winn-Dixie or Wal-Mart.

15 MR. GUGLIELMO: But there could be others  
16 that provide services to Flowers Opelika or  
17 Flowers Thomasville that have Pay-By-Scan.

18 MR. HISHTA: Other distributors of Flowers  
19 Opelika or Flowers Thomasville other than the  
20 plaintiffs potentially have a different  
21 Pay-By-Scan account, that's possible. I don't  
22 know that for sure. I do know, I do know that  
23 the plaintiff group, the only Pay-By-Scan  
24 stores that we're dealing with are Wal-Mart and  
25 Winn-Dixie.

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1 Q (By Mr. Guglielmo) I just to make sure I'm  
2 clear for the record. For example, with respect to  
3 the Publix national account, you are aware of a --

4 A Publix doesn't do Pay-By-Scan. Food Lion  
5 would be a customer that Thomasville bakery has that  
6 has a, has a Pay-By-Scan Agreement. But none of  
7 these particular distributors service the Food Lion  
8 stores.

9 Q Does Target have a Pay-By-Scan Agreement?

10 A Yes.

11 Q Are you aware of whether or not any of the  
12 route distributor's plaintiffs utilize the  
13 Pay-By-Scan with respect to Target?

14 A None that I'm aware of.

15 MR. GUGLIELMO: Go off the record.

16 VIDEOGRAPHER: The time is approximately  
17 2:40 p.m. We're off -- this concludes Tape No.  
18 1 and we're now off the record.

19 (WHEREUPON, a brief recess was  
20 taken)

21 VIDEOGRAPHER: The time is approximately  
22 3:00 p.m. This is the beginning of Tape No. 2.  
23 We are back on the record.

24 Q (By Mr. Guglielmo) Ms. Lauder, I have, I  
25 want you to turn back to the exhibit that was

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1 previously marked as Flowers Foods 11, which is the  
2 Flowers Foods payment advice report.

3 A Okay.

4 Q I just want to confirm this. I think you  
5 said this previously. This document was created by  
6 Wal-Mart and provided to Flowers Foods?

7 A It's generated through electronic  
8 transmission. We physically print it out at Flowers  
9 Foods, but the data comes in in report format. We  
10 print it out, sort it, and apply payment to the  
11 individual sub's accounts receivable.

12 Q Is this data from the Pay-By-Scan data?

13 A It would be generated from Pay-By-Scan  
14 data that goes through Wal-Mart's registers.

15 Q Is that data, the Pay-By-Scan data that  
16 goes through Wal-Mart's registers, is that data  
17 jointly maintained by Flowers Foods and Wal-Mart in  
18 the Pay-By-Scan database?

19 A Wal-Mart has its own repository for scan  
20 data. Flowers has our own. We don't share that  
21 Pay-By-Scan repository.

22 Q Okay. Ms. Lauder, keeping with the  
23 exhibit marked as 11, Flowers Food 11, is this the  
24 format in which the data is transmitted to Flowers  
25 Foods, or does Flowers Foods have to create this

K. LAUDER

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1 report based on data that is submitted to it? In  
2 other words, is this sort of the way it appears when  
3 it comes, when the electronic transmission comes to  
4 Flowers?

5 A It's sorted, the data comes in with a  
6 Julian date, store number code, and sorted by store  
7 number and date, which is assigned to a particular  
8 bakery. The number is assigned to a particular  
9 bakery. It's sorted and subtotaled at Flowers, I  
10 guess. I'm not sure what Wal-Mart does with it on  
11 their side. We subtotal it by bakery, because  
12 that's how we bill and how we get paid is by  
13 subsidiary.

14 Q So they provide you the data, and then  
15 you, Flowers Foods creates the report that would  
16 appear as Flowers Foods 11?

17 A Right. I'm not sure what Wal-Mart's  
18 report looks like.

19 Q So the breakout on the first page, plant  
20 summary in all the plants, that would be something  
21 that Flowers Foods does once they receive the data  
22 from Wal-Mart?

23 A Right.

24 MR. GUGLIELMO: I was just going to put on  
25 the record, with respect to the discussion that

K. LAUDER

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1 we had previously with regard to the  
2 Pay-By-Scan accounts and the status of the  
3 Pay-By-Scan accounts, the discovery being with  
4 respect to the Pay-By-Scan accounts that named  
5 plaintiffs have, I just want to reserve  
6 plaintiff's rights to obtain further discovery  
7 as to Pay-By-Scan account information to the  
8 extent court certifies, or additionally  
9 certifies the Class. Obviously then I think we  
10 would probably come back and ask for additional  
11 information or testimony relating to the other  
12 Pay-By-Scan accounts that are applicable to the  
13 Class members.

14 MR. HISHTA: Assuming any such decision  
15 would encompass any additional accounts that  
16 might be Pay-By-Scan accounts, yes, understood.

17 MR. GUGLIELMO: Okay. With that reserve,  
18 any time I have left for rebuttal, I think  
19 we're done.

20 MR. HISHTA: I just have a few questions.

21 EXAMINATION

22 BY-MR.HISHTA:

23 Q In relation to Flowers Foods No. 10, Ms.  
24 Lauder, if you could turn your attention to the page  
25 that has the Bates No. FBO005836.

K. LAUDER

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1 A Okay.

2 Q I just want to make sure we have clear on  
3 the record how, what information is contained on  
4 this page and the price-allowance methodology that  
5 is reflected on here. If you could turn your  
6 attention to the first line entry on this page,  
7 which is, "Sunbeam sandwich thin, 16 ounces." Do  
8 you see that entry?

9 A Yes, I do.

10 Q To the left of that entry is a quantity  
11 which is --

12 A Twenty-seven.

13 Q And what does that reflect?

14 A That is the number of units that were  
15 delivered at a different price than the standard  
16 zone price in that particular week.

17 Q So there were --

18 A Forty-seven units delivered. The normal  
19 zone price is the normal suggested wholesale price.  
20 The zone price the distributor is charged. The  
21 normal calculation of the 47 units times \$1.64 would  
22 be \$77.08. The amount that went through the  
23 hand-held was \$66.27, that created an allowance of  
24 \$10.81.

25 Q And is the allowance of \$10.81, is that an

K. LAUDER

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1 allowance that was given with respect to these 47  
2 units to wherever this product was sold?

3 A Yes. That was an allowance that was  
4 generated for the difference in the price of what  
5 the distributor was charged and what went through  
6 the invoice that he was, he would have received  
7 credit for.

8 Q What is the next column, "Distributor  
9 Discount"?

10 A The next column would be the distributor  
11 discount, would is the distributor's share of the  
12 reduced price. The, a reduction in his discount, so  
13 that he receives net credit at the net price  
14 delivered to the store.

15 Q And is this pricing methodology one that  
16 is generally used with, you know, Flowers Opelika  
17 and Flowers Thomasville?

18 A Yes.

19 MR. GUGLIELMO: I have just one follow-up  
20 question on this page.

21 FURTHER EXAMINATION

22 BY-MR.GUGLIELMO:

23 Q Looking at that line entry that you just  
24 referred to, the title, "Distributor Discount." Do  
25 you see that?

K. LAUDER

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1 A Right.

2 Q The entry says, "249," I guess?

3 A That's right.

4 Q Okay. Do you have an understanding of how  
5 that number is calculated?

6 A In this distributor class, white bread,  
7 brand white bread distributor class, the distributor  
8 receives 23 percent discount. So that would be  
9 23 percent of the \$10.81 allowance.

10 Q So take me through the steps. So the  
11 allowance override of \$10.81 is an amount that,  
12 allowance override is the amount of difference  
13 between what normally have been charged if there was  
14 no discount and what the actual charge, or the  
15 actual amount paid by the particular customer for  
16 that?

17 A Right.

18 Q So of that \$10.81, 23 percent,  
19 approximately, is subtracted out of that, which is  
20 the distributor's discount on that particular  
21 product?

22 A That's right.

23 Q Okay. And so the net allowance with  
24 respect to that particular entry, the 47 pieces of,  
25 47 loaves of Sunbeam was \$8.32?

K. LAUDER

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1 A That's right.

2 Q Does that make sense to you? So the  
3 classes you are referring to are the different  
4 classes by types of bread product, correct?

5 A That's right.

6 Q It's not unique to the particular  
7 distributor?

8 A There are standard discounts for each  
9 class. The bakery, depending on the particular  
10 distributor route, can change that discount for that  
11 particular -- that is the standard unless there is  
12 an overriding reason that they should need  
13 additional. Or if they are trying to develop a  
14 market, they might pay additional discount to get  
15 the distributor more inclined to want to deliver the  
16 product. Those kind of --

17 (WHEREUPON, a brief recess was taken)

18 Q (By Mr. Guglielmo) Ms. Lauder, just so I'm  
19 clear, the distributor discount would reflect either  
20 the, would reflect the discount that has been agreed  
21 to by the distributor and the bakery; is that  
22 correct?

23 MR. HISHTA: Objection. I don't think  
24 that's her testimony.

25 Q (By Mr. Guglielmo) Okay. The distributor

K. LAUDER

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1 discount amount, I think you said is 23, 23 percent,  
2 normally for this type of product?

3 A Yes, that's the standard discount.

4 Q Okay. So --

5 MR. HISHTA: For this particular class of  
6 products.

7 MR. GUGLIELMO: Correct. I'm just  
8 pointing to this particular line. I'm not  
9 going any further than that.

10 Q (By Mr. Guglielmo) With respect to this  
11 entry, you indicated that that would be the standard  
12 for white bread, correct?

13 A Yes. Branded white bread.

14 Q And so the distributor discount would  
15 either be the standard for the particular product at  
16 issue, or in certain instances a different discount  
17 amount depending on what the bakery had determined,  
18 correct?

19 A Right.

20 MR. GUGLIELMO: I have nothing further.

21 MR. HISHTA: Just one or two follow-up  
22 questions.

23 EXAMINATION

24 BY-MR.HISHTA:

25 Q Is the \$2.49 that is reflected on this

K. LAUDER

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1 first line this particular distributor's portion of  
2 the \$10.81 price allowance?

3 A Yes.

4 Q And with the net cost entry of \$8.32, is  
5 that an additional reduction in the purchase price  
6 of 47 units of Sunbeam sandwich bread?

7 A The net cost is the net credit that the  
8 distributor will receive on his statement for the  
9 allowances.

10 Q So in this particular situation the  
11 distributor is receiving an additional credit of  
12 \$8.32?

13 A That's right.

14 MR. HISHTA: I have nothing further.

15 MR. GUGLIELMO: We're done.

16 VIDEOGRAPHER: This concludes the  
17 videotape deposition of Ms. Karyl Lauder. The  
18 date is January 30, 2008. Time is  
19 approximately 3:14 p.m. We're off the record.  
20 (Whereupon, deposition concluded at 3:14 p.m.)

21

22

23

24

25

K. LAUDER

66

DEPOSITION ERRATA SHEET

RE: Brown & Gallo, L.L.C.

File No. 24079

Case Caption: CHARLES MORROW, et al,

vs. FLOWERS FOODS, INC., et al.

Deponent: Karly Halstead Lauder

Deposition Date: \*\*\*

To the Reporter:

I have read the entire transcript of my Deposition taken

in the captioned matter or the same has been read to me.

I request that the following changes be entered upon the

record for the reasons indicated. I have signed my name to

the Errata Sheet and the appropriate Certificate and

authorize you to attach both to the original transcript.

Page No. 10 Line No. 14 Change to: Vandy

Reason for change: Correct typographical error.

Page No. 10 Line No. 15 Change to: Vandy

Reason for change: Correct typographical error.

Page No. 13 Line No. 3 Change to: Foods for the period from  
approximately January of

Reason for change: Recollection of correct date.

VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

K. LAUDER

67

1 Deposition of Karly Halstead Lauder

2  
3 Page No. 13 Line No. 16 Change to: From the period of, from  
4 the beginning of October 1997

5 Reason for change: Recollection of correct date.

6 Page No. 13 Line No. 17 Change to: until January 2002 I was  
7 Flowers Bakeries

8 Reason for change: Recollection of correct date.

9 Page No. 14 Line No. 13-16 Change to: Bakeries Group Assistant

10 Controller and then Controller in 1997, and held this position until  
11 December 2002. And

12 Reason for change: Correction of position held and dates.

13 Page No. 15 Line No. 14 Change to: They maintain information  
14 in SAP/our accounting

15 Reason for change: Clarification of testimony.

16 Page No. 15 Line No. 15 Change to: system for Flowers Foods and  
17 its subsidiaries. The detail of the orders and the invoices

18 Reason for change: Clarification of testimony.

19 Page No. 20 Line No. 5 Change to: But the bakery gives the  
20 distributor temporary

21 Reason for change: Clarification of testimony.

22 SIGNATURE: 

23 DATE: 3/7/2008

24 Karly Halstead Lauder

25  
VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

SUPPLEMENTAL ERRATA SHEET

68

1 Deposition of Karly Halstead Lauder

2

3 Page No. 22 Line No. 1 Change to: The bakeries run  
4 calculations for price in

4

5 Reason for change: Clarification of testimony.

6 Page No. 29 Line No. 3 Change to: or he owes the company.  
7 And the bakeries settle on a weekly

7

8 Reason for change: Clarification of testimony.

9 Page No. 39 Line No. 9 Change to: it up by location on  
10 which plant it's for.

10

11 Reason for change: Correct typographical error.

12 Page No. 48 Line No. 3 Change to: Yes. The negotiation of  
13 the agreement

13

14 Reason for change: Correction of testimony as I noted  
15 national accounts representative involved.

16 Page No. 49 Line No. 5 Change to: Agreement between Winn-  
17 Dixie and Flowers Bakeries

16

17 Reason for change: Correct typographical error.

18 Page No. 49 Line No. 16 Change to: time their Director of  
19 Grocery was Phillip Payment.

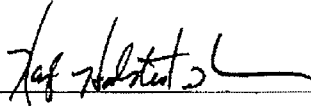
19

20 Reason for change: Correct name.

21 Page No. 51 Line No. 14 Change to: Dwayne Cleveland

SUPPLEMENTAL ERRATA SHEET

69

- 1 Reason for change: Discovered following deposition that Mr.  
Cleveland has a Target account with Pay-By-Scan
- 2 Page No. 55 Line No. 12 Change to: Forty-seven.
- 3 Reason for change: Correct typographical error.
- 4 Page No. 64 Line No. 3 Change to: Deposition of Karyl  
Halstead Lauder
- 5 Reason for change: Correct typographical error.
- 6 Page No. 65 Line No. 6 Change to: Karyl Halstead Lauder,  
who, being duly sworn, states that the
- 7 Reason for change: Correct typographical error.
- 8 Page No. 65 Line No. 12 Change to: Karyl Halstead Lauder
- 9
- 10 SIGNATURE:  DATE: 3/7/2008
- 11 Karyl Halstead Lauder

## EXHIBIT F

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

04/11/2008

CT Log Number 513303241



**TO:** David Linder, Attorney  
Fortson, Bentley & Griffin  
2500 Daniel's Bridge Road, Building 200, Suite 3A  
Athens, GA 30606

**RE: Process Served in Alabama**

**FOR:** Zaxby's Holdings, L.L.C. (Domestic State: GA)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Charles Morrow, et al., Pltfs. vs. Flowers Food, Inc., et al., Dfts. // To: Zaxby's Holdings, LLC  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Subpoena, Proof of Service Form, Attachment

**COURT/AGENCY:** US District Court for the Middle District, AL  
Case # 3:07 CV 617

**NATURE OF ACTION:** Subpoena - Business records - Pertaining to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC and Flowers Baking Company of Thomasville, LLC

**ON WHOM PROCESS WAS SERVED:** The Corporation Company, Montgomery, AL

**DATE AND HOUR OF SERVICE:** By Process Server on 04/11/2008 at 11:15

**APPEARANCE OR ANSWER DUE:** by 4/30/08 at 9:00 a.m.

**ATTORNEY(S) / SENDER(S):** Greg L. Davls  
The Law Offices of Greg L. Davis  
6987 Halcyone Park Drive  
Montgomery, AL 36117  
334-832-9080

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 798418009432

**SIGNED:** The Corporation Company

**ADDRESS:** 2000 Interstate Park Drive  
Suite 204  
Montgomery, AL 36109

**TELEPHONE:** 334-387-7680

Page 1 of 1 / SR

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Zaxby's Holdings, LLC c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE ATTACHMENT

PLACE

THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

## (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

04/16/2008 08:05 3142596320

PAGE 01/03

SAO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

**SUBPOENA IN A CIVIL CASE**

V.

FLOWERS FOOD, INC., et al.

Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
Hardee's Food Systems, Inc. c/o CSC Lawyers Inc. Service  
150 South Perry Street  
Montgomery, Alabama 36104

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 632-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

Received Time Apr. 16. 8:47AM

04/16/2008 08:05 3142596320

PAGE 02/03

**ATTACHMENT**

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

04/16/2008 08:05 3142596320

PAGE 03/03

AOSS (Rev. 12/06) Subpoena in a Civil Case**PROOF OF SERVICE**

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to avoid trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not depending on specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate excuse for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

Received Time Apr. 16. 8:47AM

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

04/11/2008

CT Log Number 513303217



**RECEIVED**

APR 15 2008

**Chick-Fil-A Inc.**

**TO:** Bureon Ledbetter, General Counsel  
CHICK-FIL-A, INC.  
5200 Buffington Rd  
Atlanta, GA 30349

**RE: Process Served in Alabama**

**FOR:** CHICK-FIL-A, INC. (Domestic State: GA)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Charles Morrow, et al., Pltfs. vs. Flowers Food, Inc., et al., Dfts. // To: Chick-Fil-A, Inc.

**DOCUMENT(S) SERVED:** Subpoena, Proof of Service Form, Attachment

**COURT/AGENCY:** US District Court for the Middle District, AL  
Case # 3:07 CV 617

**NATURE OF ACTION:** Subpoena - Business records - Pertaining to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC and Flowers Baking Company of Thomasville, LLC

**ON WHOM PROCESS WAS SERVED:** The Corporation Company, Montgomery, AL

**DATE AND HOUR OF SERVICE:** By Process Server on 04/11/2008 at 11:15

**APPEARANCE OR ANSWER DUE:** by 4/30/08 at 9:00 a.m.

**ATTORNEY(S) / SENDER(S):** Greg L. Davis  
The Law Offices of Greg L. Davis  
6987 Halcyone Park Drive  
Montgomery, AL 36117  
334-832-9080

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 798917957035

**SIGNED:** The Corporation Company

**ADDRESS:** 2000 Interstate Park Drive  
Suite 204  
Montgomery, AL 36109

**TELEPHONE:** 334-387-7680

Page 1 of 1 / SR

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Chick-Fil-A, Inc. c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

## (B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**ATTACHMENT**

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.



## **FAX TRANSMISSION**

**To:** Sheila Cesarano, Esq.

**Date:** 4/16/08

**Company:** Shutts & Bowen

**Time:** 4:09 PM

**From:** Matthew Sitkowski

**FAX#:** 305-347-7386

**No. of pages:** 4 + cover

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**RE: Charles Morrow, et al v. Flowers Food, et al**

Sheila,

Please see the attached Subpoena that we received yesterday.

Thanks,

Matt

**NOTICE OF CONFIDENTIALITY:**

The information contained in this facsimile message is confidential information intended only for the use of the individual or entity addressed above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the below address via the Postal Service. We will reimburse you for all postage expenses incurred. Thank you.

**BURGER KING CORPORATION**

5505 Blue Lagoon Drive • Miami, Florida 33126 • Phone (305) 378-7149 • Fax (305) 378-7275

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

04/11/2008

CT Log Number 513303204



*Matt*  
**RECEIVED**  
4/15/08  
*LL*

**TO:** Sharalea Andrade  
Burger King Corporation  
5505 Blue Lagoon Drive  
Miami, FL 33126-

**RE:** Process Served in Alabama

**FOR:** Burger King Corporation (Domestic State: FL)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

<b>TITLE OF ACTION:</b>	Charles Morrow, et al., Pliffs. vs. Flowers Food, Inc., et al., Dfts. // To: Burger King Corporation
<b>DOCUMENT(S) SERVED:</b>	Subpoena, Proof of Service Form, Attachment
<b>COURT/AGENCY:</b>	US District Court for the Middle District, AL Case # 3:07 CV 617
<b>NATURE OF ACTION:</b>	Subpoena - Business records - Pertaining to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC and Flowers Baking Company of Thomasville, LLC
<b>ON WHOM PROCESS WAS SERVED:</b>	The Corporation Company, Montgomery, AL
<b>DATE AND HOUR OF SERVICE:</b>	By Process Server on 04/11/2008 at 11:15
<b>APPEARANCE OR ANSWER DUE:</b>	by 4/30/08 at 9:00 a.m.
<b>ATTORNEY(S) / SENDER(S):</b>	Greg L. Davis The Law Offices of Greg L. Davis 6987 Halcyone Park Drive Montgomery, AL 36117 334-832-9080
<b>ACTION ITEMS:</b>	SOP Papers with Transmittal, via Fed Ex 2 Day , 790982635849 Email Notification, Sharalea Andrade sandrade@whopper.com
<b>SIGNED: ADDRESS:</b>	The Corporation Company 2000 Interstate Park Drive Suite 204 Montgomery, AL 36109 334-387-7680
<b>TELEPHONE:</b>	

Page 1 of 1 / SR

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

DA088 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

SUBPOENA IN A CIVIL CASE

V.

FLOWERS FOOD, INC., et al.

Case Number: 3:07-CV-617-MHT

TO: Custodian of Records  
Burger King Corporation c/o The Corporation Company  
2000 Interstate Park Drive, Suite 204  
Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE ATTACHMENT

PLACE

THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

## Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expenses resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation material, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**ATTACHMENT**

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

## EXHIBIT G

**Hishta, Kevin**

---

**From:** Teva Allen [teva.allen@charter.net]  
**Sent:** Wednesday, April 23, 2008 10:39 AM  
**To:** Hishta, Kevin  
**Subject:** Fwd: Re: Subpoenas in Morrow

--

Teva Allen, CP  
Paralegal to Greg L. Davis  
6987 Halcyon Park Drive  
Montgomery, AL 36106  
Phone: (334) 832-9080  
Fax: (334) 409-7001

> Date: Wed, 23 Apr 2008 7:10:29 -0700  
> From: Teva Allen <teva.allen@charter.net>  
> To: Sandra.Reiss@ogletreedeakins.com, Kevin.Hista@ogletreedeakins.com  
> Subject: Re: Subpoenas in Morrow  
> Cc: jguglielmo@wdklaw.com, gldavis@knology.net  
>  
>  
> --Dear Dear Kevin and Sandra: In accordance with Fed.R.Civ.P. 45 (b)(1) let this serve  
as Plaintiff's notice that we will be issuing subpoenas to the following:  
>  
> Family Dollar Stores, Inc.; Wal-Mart Stores, Inc.; Fred's Stores of  
> Alabama, Inc.; Publix Supermarkets, Inc.; Winn-Dixie Stores,  
> Inc.; Bruno's, Inc.; Southern Family Markets, LLC; Target  
> Corporation; Sonic Restaurants, Inc.; Arby's, Inc.; Burger King Corporation; Hardee's Food  
Systems, Inc.; Sodexo, Inc.; Chick-Fil-A, Inc.; Zaxby's Holdings and The Krystal Company.  
>  
> We will, of course, be copying you on any documents received.  
>  
> Teva Allen, CP  
> Paralegal to Greg L. Davis  
> 6987 Halcyon Park Drive  
> Montgomery, AL 36106  
> Phone: (334) 832-9080  
> Fax: (334) 409-7001

## EXHIBIT H

**Hishta, Kevin**

---

**From:** Tammi Poff [tammip@knology.net]  
**Sent:** Friday, April 25, 2008 5:44 PM  
**To:** Hishta, Kevin  
**Subject:** Fw: Morrow Subpoenas  
**Attachments:** Morrow Subpoenas.pdf

----- Original Message -----

**From:** Tammi Poff  
**To:** Kevin.Hishta@ogletreedeakins.com  
**Sent:** Friday, April 25, 2008 2:38 PM  
**Subject:** Morrow Subpoenas

Please find attached copies of subpoenas referenced in my earlier emails.

Teva Allen, CP  
Paralegal to Greg L. Davis

4/29/2008

**FILE COPY**

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: ATTN: Bob Einhorn  
 Zarco Einhorn & Salkowski  
 100 SE 2nd Street, 27th Floor  
 Miami, FL 33131

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE

THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyon Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis-Attorney for Plaintiffs  
 6987 Halcyon Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AOR8 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden:

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please Produce:

1. Copies of all Plaintiffs' depositions which were taken in the case styled "Keith D. Quarles, et al., v Flowers Foods, Inc. et al., CASE NO. 05-21738-CIV-SEITZ/MCALILEY filed in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA", including all exhibits attached to said depositions.
2. Copies of all Defendants' depositions which were taken in the case styled "Keith D. Quarles, et al., v Flowers Foods, Inc. et al., CASE NO. 05-21738-CIV-SEITZ/MCALILEY filed in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA", including all exhibits attached to said depositions.
3. Copies of all 30b6 depositions and 30b1 depositions taken in the case styled "Keith D. Quarles, et al., v Flowers Foods, Inc. et al., CASE NO. 05-21738-CIV-SEITZ/MCALILEY filed in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA", including all exhibits attached to said depositions.
4. Copies of all Expert Witness reports filed in the case styled Keith D. Quarles, et al., v Flowers Foods, Inc. et al., CASE NO. 05-21738-CIV-SEITZ/MCALILEY filed in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA"
5. Copies of all depositions taken in the case styled "Keith D. Quarles, et al., v Flowers Foods, Inc. et al., CASE NO. 05-21738-CIV-SEITZ/MCALILEY filed in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA", including all exhibits attached to said depositions.
6. Copies of all documents produced by Plaintiffs and Defendants in the case styled "Keith D. Quarles, et al., v Flowers Foods, Inc. et al., CASE NO. 05-21738-CIV-SEITZ/MCALILEY filed in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA".

**FILE COPY**

SD-88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
Family Dollar Stores, Inc. c/o Prentice Hall Corp. System  
150 South Perry Street  
Montgomery, Alabama 36104

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE ATTACHMENT

PLACE

THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AOSS (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

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(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

**SUBPOENA IN A CIVIL CASE**

V.

FLOWERS FOOD, INC., et al.

Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Wal-Mart Stores, Inc. c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
 4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AORR (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

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(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

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(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

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(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

AO 88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT****MIDDLE****DISTRICT OF****ALABAMA****CHARLES MORROW, et al.,****SUBPOENA IN A CIVIL CASE****V.****FLOWERS FOOD, INC., et al.**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Fred's Stores of Alabama, Inc. c/o W. Clark Campbell, Jr.  
 260 Washington Avenue  
 Montgomery, Alabama 36197

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
 4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party to whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

SA088 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
Publix Supermarkets, Inc. c/o Prentice Hall Corp. System  
150 South Perry Street  
Montgomery, Alabama 36104

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

HAND DELIVERY

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

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## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

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(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

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**FILE COPY**

Subpoena (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
Winn-Dixie Stores, Inc. c/o CSC Lawyers Inc. Service  
150 South Perry Street  
Montgomery, Alabama 36104

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COURTROOM

DATE AND TIME

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SEE ATTACHMENT

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DATE AND TIME  
4/30/2008 9:00 am

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PREMISES

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

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**ATTACHMENT**

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

SAO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Bruno's, Inc. c/o CSC Lawyers Incorporating Service, Inc.  
 150 South Perry Street  
 Montgomery, Alabama 36104

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE

THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AORR (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

HAND DELIVERY

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

5-AO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
Southern Family Markets, LLC c/o The Corporation Co.  
2000 Interstate Park Drive, Suite 204  
Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO 88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

HAND DELIVERY

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena is issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

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(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

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2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

SAOR8 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Target Corporation c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

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 SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
 4/30/2008 9:00 am

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PREMISES

DATE AND TIME

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

HAND DELIVERY

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

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(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

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This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

FD-204 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

**SUBPOENA IN A CIVIL CASE**

V.

FLOWERS FOOD, INC., et al.

Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Sonic Restaurants, Inc. c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE

THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO 88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

SAORR (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Arby's, Inc. c/o Richard A. Ball  
 200 South Lawrence Street  
 Montgomery, Alabama 36104

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
 4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

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(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

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## FILE COPY

5A ORR (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
UNITED STATES DISTRICT COURT

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

## SUBPOENA IN A CIVIL CASE

Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
Burger King Corporation c/o The Corporation Company  
2000 Interstate Park Drive, Suite 204  
Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

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SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
4/30/2008 9:00 am

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PREMISES

DATE AND TIME

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

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SAORR (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Hardee's Food Systems, Inc. c/o CSC Lawyers Inc. Service  
 150 South Perry Street  
 Montgomery, Alabama 36104

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

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 6987 Halcyone Park Drive, Montgomery, Alabama 36117

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Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AORR (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

HAND DELIVERY

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

SAQR8 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

**SUBPOENA IN A CIVIL CASE**

V.

FLOWERS FOOD, INC., et al.

Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Sodexo, Inc. c/o Prentice Hall Corporation System  
 150 South Perry Street  
 Montgomery, Alabama 36104

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
 4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

HAND DELIVERY

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

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## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

SAO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT****MIDDLE****DISTRICT OF****ALABAMA****CHARLES MORROW, et al.,****V.****FLOWERS FOOD, INC., et al.****SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Chick-Fil-A, Inc. c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME  
 4/30/2008 9:00 am

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PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AORR (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

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**FILE COPY**

SAO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 Zaxby's Holdings, LLC c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

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DATE AND TIME

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 6987 Halcyone Park Drive, Montgomery, Alabama 36117

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PREMISES

DATE AND TIME

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
	HAND DELIVERY
SERVED BY (PRINT NAME)	TITLE

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(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

ATTACHMENT

Please produce:

1. A copy of your complete file referable to Flowers Food, Inc., Flowers Food Bakery Group, Flowers Baking Company of Opelika, LLC, and Flowers Baking Company of Thomasville, LLC ("the Flowers Entities"), including, but not limited to, copies of all contracts, protocol agreements, and distribution agreements between you and the Flowers Entities, copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any of the Flowers Entities, and communications between you and the Flowers Entities with respect to products distributed by any of the following Plaintiff distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

2. A copy of your complete file referable to any of the following Plaintiff route distributors: Charles Morrow; Michael Overton; Lew Baxter; Melvin Snow; Ricky Small; Michael Smith; James Marty Smith; Greg Patisaul; Mark Murphy; Gary Chambliss; and Dwayne Cleveland, including all documents describing the Flowers Food, Inc., products distributed, any and all contracts, protocol agreements, and distribution agreements between you and any of the Flowers independent route distributor plaintiffs, and copies of all notes, memoranda, correspondence, and any other document that relates to negotiations between you and any Flowers route distributor plaintiffs for the past four (4) years.

This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.

**FILE COPY**

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

MIDDLE

DISTRICT OF

ALABAMA

CHARLES MORROW, et al.,

V.

FLOWERS FOOD, INC., et al.

**SUBPOENA IN A CIVIL CASE**Case Number:<sup>1</sup> 3:07-CV-617-MHT

TO: Custodian of Records  
 The Krystal Company c/o The Corporation Company  
 2000 Interstate Park Drive, Suite 204  
 Montgomery, Alabama 36109

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 SEE ATTACHMENT

PLACE

THE LAW OFFICES OF GREG L. DAVIS; ATTN: Greg L. Davis  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117

DATE AND TIME

4/30/2008 9:00 am

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

4/10/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Greg L. Davis, The Law Offices of Greg L. Davis - Attorney for Plaintiffs  
 6987 Halcyone Park Drive, Montgomery, Alabama 36117 (334) 832-9080

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

HAND DELIVERY

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production; inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

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(i) fails to allow reasonable time for compliance;

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(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

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to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

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This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia. Documents are requested for the past four (4) years.

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This request includes any and all documents held by you and/or any of your affiliated entities, divisions, subsidiaries, and/or franchises operating in either the states of Alabama and/or Georgia.



WhatleyDrake&Kallas

Joseph P. Guglielmo  
Direct Dial: 212-447-7007  
jguglielmo@wdklaw.com

November 26, 2007

VIA E-MAIL

Kevin P. Hishta  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
2100 Bank of America Plaza  
Atlanta, Georgia 30308

Re: *Morrow et al. v. Flowers Foods, Inc. and Flowers Baking Co. of Opelika, LLC*  
Civil Action No. 3:07-cv-00617-MHT

Dear Kevin:

The purpose of this letter is to set forth our discussion regarding the production of documents, the plaintiffs' requests for admission and plaintiffs' interrogatories.

During our meet and confers October 16 and November 15, 2007 on Plaintiffs' 30(b)(6) Notice, you have agreed to produce discovery from and concerning Flowers Foods, Flowers/Opelika and Flowers/ Thomasville (collectively "Defendants"). However, it is our understanding that Defendants continue to take the position that the scope of discovery should not include information concerning other potential independent distributors other than the twelve (12) named plaintiffs nor should it include information relating to any subsidiaries other than Defendants Flowers/ Opelika and Flowers/ Thomasville. Therefore, we agreed to set aside the overarching objection on the scope of discovery allowed until the Court has ruled on the pending Motion for Protective Order. Plaintiffs continue to believe that permissible discovery includes information relating to any subsidiaries of Flowers Foods including any discovery of Flowers Foods concerning its involvement or control of its subsidiaries.

During our meet and confer, you identified areas where responsive materials potentially exist, including: the individual distributor files, accounting documents, national accounts files, policy and procedure documents, training documents, business model documents, implementation documents, prospective distributor records, hand-held computer records, emails and documents regarding risk of loss.

New York • Birmingham • Boston

Whatley Drake & Kallas, LLC Attorneys at Law 1540 Broadway, 37th Floor New York, New York 10036 Telephone: (212) 447-7070 Facsimile: (212) 447-7077

[www.wdklaw.com](http://www.wdklaw.com)



Kevin P. Hishta  
November 26, 2007  
Page 2

Specifically, as to production of these documents trails you confirmed the following:

- individual distributor files would be maintained at the subsidiary level and would primarily consist of paper files.
- accounting documents consisting primarily of weekly settlement statements and certain back-up documentation (most likely maintained as electronically stored information) that would be possessed both by the parent company and the subsidiaries.
- We agreed that production of representative sampling of documents of pay-by-scan, national accounts could be made at this time based on your representation of the volume and that plaintiffs and would discuss the production with you after the initial review.
- policy and procedure documents would be produced both at the parent and subsidiary level.
- training documents would exist at the individual subsidiary level and that production would be made from both locations.
- business model documents are located at both the parent and the subsidiary level.
- implementation documents are located primarily at the subsidiary level, but there will be some documents at the parent level.
- prospective distributor records are located at the individual subsidiary level.
- hand-held computer documents are located at the individual subsidiary level.
- Emails are located at both the parent and the subsidiary levels.
- We agreed that production of a representative sampling of documents concerning risk of loss documents including those that are found in the Protocol Agreement both from the parent and the subsidiary levels.
- As with the national account documents, we have agreed to accept the representative sampling and would discuss the production with you after the initial review.

With regard to these document trails, for those documents not subject to the overarching discovery disagreement mentioned above, You confirmed that Defendants have agreed to a rolling production, which should commence in the next three to four weeks. At this time, you have also agreed to confer with your production team and then consult us on the manner and method of production, including the method we have set forth in our request for production.

Kevin P. Hishta  
November 26, 2007  
Page 3

Lastly, you have agreed to re-review the requests for admission and the interrogatories and to modify Flowers Foods' responses with respect to the addition of the new Defendant, Flowers/ Thomasville. With this letter, plaintiffs are serving separate requests for production on Flowers/ Thomasville.

As to the specific interrogatories and requests for admission, we believe the following accurately reflects our discussion last week:

**Interrogatories**

**Interrogatory Nos. 3 & 4:**

Plaintiffs clarified that these interrogatories seek the identification of what is used to track various purchases, on a national level and on a local level. Defendants agreed they would revisit providing further responses in light of this clarification.

**Interrogatory No. 5:**

Plaintiffs clarified that this interrogatory seeks to know any alternate means of delivering fresh baked products. Defendants agreed they would revisit providing further responses in light of this clarification.

**Interrogatory No. 6:**

Defendants have responded that the only policy on whether distributors can distribute other product is in the contained in the independent distributor contract and have confirmed that there are no policy documents on this issue.

**Interrogatory No. 7:**

In addition to the response set forth in the interrogatory, Defendants confirmed that Flowers Industries wanted a model developed that was similar to other contracts in the bread industry, so they contacted outside counsel and that no person within Flowers Industries drafted any portion of the distributor agreement.

**Interrogatory Nos. 8 & 9:**

Defendant will revisit these interrogatories with respect to the new Defendant, Flowers/ Thomasville.

Kevin P. Hishta  
November 26, 2007  
Page 4

**Interrogatory Nos 15 & 16:**

Defendants have further clarified their response by providing that Flowers/Opelika and Flowers/ Thomasville bear most of the burden of the price allowance and that distributors need to seek approval to change prices on the bakery products.

**Interrogatory No. 19:**

Flowers Foods confirms that it does not have any thrift stores.

**Interrogatory No. 20:**

Flowers/Opelika does not have regular company-run sales routes but rather certain instances where company-run routes may exist. Flowers/ Opelika stated that, in new market areas, there are company-run employee routes until that market area is sufficiently developed. Additionally, when a distributor sells his or her territory, an employee of the company will run the route until a new distributor is found.

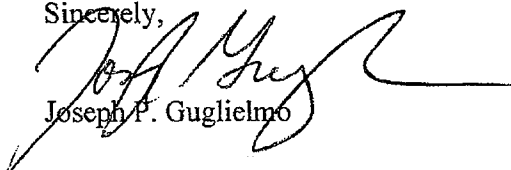
**Requests for Admission:**

**Request for Admission No. 18:**

Regarding whether distributors are required to sell their stale products on a daily basis, Flowers admitted that, for a distributor to sell product back to Flowers, he or she must sell the product back within a certain time frame in order for Flowers to use it in their thrift stores. If a distributor does not sell it back within the designated time frame, Flowers will not buy the stale product.

If you disagree with any of the information above, please contact me.

Sincerely,

  
Joseph P. Guglielmo

JPG:ar

cc: Sandra Reiss  
Greg L. Davis  
E. Kirk Wood  
Joe R. Whatley, Jr.  
Amy Weaver

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**CHARLES MORROW, *et al.*,**

**Plaintiffs,**

**V.**

**CASE NO: 3:07-cv-00617-MHT**

**FLOWERS FOODS, INC., *et al.*,**

## Defendants.

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## ORDER

Pending before the Court is Defendants’ Motion for Protective Order and/or Motion to Quash Non-Party National Accounts Subpoenas (“Defendants’ Motion for Protective Order”). (Doc. No. 103, filed April 28, 2008).

As this Court has previously stated in its Order dated November 27, 2007, and its Order dated April 23, 2008, “because the Court has not yet ruled on Plaintiffs’ Motion to Conditionally Certify and Facilitate Class Notice (Doc. 32, filed September 21, 2007), this case only involves the current named parties and the allegations against them. Thus, discovery is also limited to those parties and subject matter.” (Ct. Doc. Nos. 64; 102.)

It is well established that under Federal Rule of Civil Procedure 26(c)(4), the Court may “make any order which justice requires to protect a party or person from . . . undue burden or expense, including . . . that certain matters not be inquired into, or that the scope of the discovery or disclosure be limited to certain matters . . .” Fed. R. Civ. P. 26(c)(4). The Court may also limit discovery if the discovery sought is duplicative or “the party seeking discovery has had ample opportunity to obtain the information by discovery in the action.” Fed. R. Civ. P. 26(b)(2)(C)(ii); (ii).

The subpoenas Plaintiffs served on various non-party national accounts, which are the subject of Defendants' Motion for Protective Order, seek information which is not limited to the named parties and subject matter. Therefore, Plaintiffs' subpoenas seek information that exceeds the permissible scope of discovery at this time, as set forth in this Court's Orders. (Ct. Doc. Nos. 64; 102.) Plaintiffs' subpoenas also seek duplicative information already provided by Defendants to Plaintiffs.

For the above reasons, it is **ORDERED** that Defendants' Motion for Protective Order is **GRANTED**.

Done this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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